Title 332 WAC
NATURAL RESOURCES, BOARD AND DEPARTMENT OF

Chapters

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DISPOSITION OF CHAPTERS FORMERLY CODIFIED IN THIS TITLE

Chapter 332-40
GUIDELINES INTERPRETING AND IMPLEMENTING THE STATE ENVIRONMENTAL POLICY ACT

332-40-010 Authority. [Order 259, § 332-40-010, filed 6/10/76; Order 257, § 332-40-010, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-010.

332-40-020 Purpose. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-020, filed 4/11/78; Order 259, § 332-40-020, filed 6/10/76; Order 257, § 332-40-020, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-030.

332-40-025 Scope and coverage of this chapter. [Order 259, § 332-40-025, filed 6/10/76; Order 257, § 332-40-025, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-030 Integration of SEPA procedures with other department operations. [Order 259, § 332-40-030, filed 6/10/76; Order 257, § 332-40-030, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-035 Statute of limitations. [Order 259, § 332-40-035, filed 6/10/76; Order 257, § 332-40-035, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-037 SEPA public information center. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-037, filed 4/11/78; Order 259, § 332-40-037, filed 6/10/76; Order 257, § 332-40-037, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-040 Definitions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-040, filed 4/11/78; Order 259, § 332-40-040, filed 6/10/76; Order 257, § 332-40-040, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-040.

332-40-045 Responsible official. [Order 259, § 332-40-045, filed 6/10/76; Order 257, § 332-40-045, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-050 Use of the environmental checklist form. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-050, filed 4/11/78; Order 259, § 332-40-050, filed 6/10/76; Order 257, § 332-40-050, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-055 Timing of the EIS process. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-055, filed 4/11/78; Order 259, § 332-40-055, filed 6/10/76; Order 257, § 332-40-055, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-055.

332-40-060 Scope of a proposal and its impacts for the purposes of lead agency determination, threshold determination, and EIS preparation. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-060, filed 4/11/78; Order 259, § 332-40-060, filed 6/10/76; Order 257, § 332-40-060, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-100 Summary of information which may be required of a private applicant. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-100, filed 4/11/78; Order 259, § 332-40-100, filed 6/10/76; Order 257, § 332-40-100, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-160 No presumption of significance for nonexempt actions. [Order 259, § 332-40-160, filed 6/10/76; Order 257, § 332-40-160, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-170 Categorical exemptions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-170, filed 4/11/78; Order 259, § 332-40-170, filed 6/10/76; Order 257, § 332-40-170, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-175 Exemptions and nonexemptions applicable to specific state agencies. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order

292), § 332-40-175, filed 4/11/78; Order 268, § 332-40-175, filed 7/21/76; Order 259, § 332-40-175, filed 6/10/76; Order 257, § 332-40-175, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-177 Environmentally sensitive areas. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-177, filed 4/11/78; Order 259, § 332-40-177, filed 6/10/76; Order 257, § 332-40-177, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-180 Exemption for emergency actions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-180, filed 4/11/78; Order 259, § 332-40-180, filed 6/10/76; Order 257, § 332-40-180, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-190 Use and effect of categorical exemptions. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-190, filed 4/11/78; Order 259, § 332-40-190, filed 6/10/76; Order 257, § 332-40-190, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-200 Lead agency—Responsibilities. [Order 259, § 332-40-200, filed 6/10/76; Order 257, § 332-40-200, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-203 Determination of lead agency—Procedures. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-203, filed 4/11/78; Order 259, § 332-40-203, filed 6/10/76; Order 257, § 332-40-203, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-205 Lead agency designation—Department proposals. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-205, filed 4/11/78; Order 259, § 332-40-205, filed 6/10/76; Order 257, § 332-40-205, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-210 Lead agency designation—Proposals involving both private and public construction activity. [Order 259, § 332-40-210, filed 6/10/76; Order 257, § 332-40-210, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-215 Lead agency designation—Private projects for which the department is the only agency with jurisdiction. [Order 259, § 332-40-215, filed 6/10/76; Order 257, § 332-40-215, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-220 Lead agency designation—Private projects requiring licenses from more than one agency, when one of the agencies is a county/city. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-220, filed 4/11/78; Order 259, § 332-40-220, filed 6/10/76; Order 257, § 332-40-220, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-225 Lead agency designation—Private projects requiring licenses from more than one state agency. [Order 259, § 332-40-225, filed 6/10/76; Order 257, § 332-40-225, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-230 Lead agency designation—Specific proposals. [Order 259, § 332-40-230, filed 6/10/76; Order 257, § 332-40-230, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-240 Agreements as to lead agency status. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-240, filed 4/11/78; Order 259, § 332-40-240, filed 6/10/76; Order 257, § 332-40-240, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-245 Agreements between agencies as to division of lead agency duties. [Order 259, § 332-40-245, filed 6/10/76; Order 257, § 332-40-245, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-260 Dispute as to lead agency determination—Resolution by CEP. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-260, filed 4/11/78; Order 259, § 332-40-260, filed 6/10/76; Order 257, § 332-40-260, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-300 Threshold determination requirement. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-300, filed 4/11/78; Order 259, § 332-40-300, filed 6/10/76; Order 257, § 332-40-300, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-305 Designation of responsible official. [Order 259, § 332-40-305, filed 6/10/76; Order 257, § 332-40-305, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-310 Threshold determination procedures—Environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-310, filed 4/11/78; Order 259, § 332-40-310, filed 6/10/76; Order 257, § 332-40-310, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-315 Actions requiring a threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-315, filed 4/11/78; Order 259, § 332-40-315, filed 6/10/76; Order 257, § 332-40-315, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-310.

332-40-320 Threshold determination procedures—Initial review of environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-320, filed 4/11/78; Order 259, § 332-40-320, filed 6/10/76; Order 257, § 332-40-320, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-330 Threshold determination procedures—Information in addition to checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-330, filed 4/11/78; Order 259, § 332-40-330, filed 6/10/76; Order 257, § 332-40-330, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-340 Threshold determination procedures—Negative declarations. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-340, filed 4/11/78; Order 259, § 332-40-340, filed 6/10/76; Order 257, § 332-40-340, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-345 Assumption of lead agency status by the department when it is an agency with jurisdiction over a proposal—Prerequisites, effect and form of notice. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-345, filed 4/11/78; Order 259, § 332-40-345, filed 6/10/76; Order 257, § 332-40-345, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-350 Affirmative threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-350, filed 4/11/78; Order 259, § 332-40-350, filed 6/10/76; Order 257, § 332-40-350, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-355 Form of declaration of significance/nonsignificance. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-355, filed 4/11/78; Order 259, § 332-40-355, filed 6/10/76; Order 257, § 332-40-355, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-360 Threshold determination criteria—Application of environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-360, filed 4/11/78; Order 259, § 332-40-360, filed 6/10/76; Order 257, § 332-40-360, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-365 Environmental checklist. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-365, filed 4/11/78; Order 259, § 332-40-365, filed 6/10/76; Order 257, § 332-40-365, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-370 Withdrawal of affirmative threshold determination. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-370, filed 4/11/78; Order 259, § 332-40-370, filed 6/10/76; Order 257, § 332-40-370, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-375 Withdrawal of negative threshold determination. [Order 259, § 332-40-375, filed 6/10/76; Order 257, § 332-40-375, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-400 Duty to begin preparation of a draft EIS. [Order 259, § 332-40-400, filed 6/10/76; Order 257, § 332-40-400, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-405 Purpose and function of a draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-405, filed 4/11/78; Order 259, § 332-40-405, filed 6/10/76; Order 257, § 332-40-405, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-410 Predraft consultation procedures. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-410, filed 4/11/78; Order 259, § 332-40-410, filed 6/10/76; Order 257, § 332-40-410, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-420 Preparation of EIS by persons outside the department. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-420, filed 4/11/78; Order 259, § 332-40-420, filed 6/10/76; Order 257, § 332-40-420, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. Later promulgation, see WAC 332-41-420.

332-40-425 Organization and style of a draft EIS. [Order 259, § 332-40-425, filed 6/10/76; Order 257, § 332-40-425, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-440 Contents of a draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-440, filed 4/11/78; Order 259, § 332-40-440, filed 6/10/76; Order 257, § 332-40-440, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-442 Special considerations regarding contents of an EIS on a nonproject action. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-442, filed 4/11/78; Order 259, § 332-40-442, filed 6/10/76; Order 257, § 332-40-442, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-444 List of elements of the environment. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-444, filed 4/11/78; Order 259, § 332-40-444, filed 6/10/76; Order 257, § 332-40-444, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-446 Draft EIS—Optional additional elements—Limitation. [Order 259, § 332-40-446, filed 6/10/76; Order 257, § 332-40-446, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-450 Public awareness of availability of draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-450, filed 4/11/78; Order 259, § 332-40-450, filed 6/10/76; Order 257, § 332-40-450, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-455 Circulation of the draft EIS—Review period. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-455, filed 4/11/78.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-460 Specific agencies to which draft EIS shall be sent. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-460, filed 4/11/78; Order 259, § 332-40-460, filed 6/10/76; Order 257, § 332-40-460, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-465 Agencies possessing environmental expertise. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-465, filed 4/11/78; Order 259, § 332-40-465, filed 6/10/76; Order 257, § 332-40-465, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-470 Cost to the public for reproduction of environmental documents. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-470, filed 4/11/78; Order 259, § 332-40-470, filed 6/10/76; Order 257, § 332-40-470, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-480 Public hearing on a proposal—When required. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-480, filed 4/11/78; Order 259, § 332-40-480, filed 6/10/76; Order 257, § 332-40-480, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-485 Notice of public hearing on environmental impact of the proposal. [Order 259, § 332-40-485, filed 6/10/76; Order 257, § 332-40-485, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-490 Public hearing on the proposal—Use of environmental documents. [Order 259, § 332-40-490, filed 6/10/76; Order 257, § 332-40-490, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-495 Preparation of amended or new draft EIS. [Order 259, § 332-40-495, filed 6/10/76; Order 257, § 332-40-495, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-500 Department responsibilities when consulted as an agency with jurisdiction. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-500, filed 4/11/78; Order 259, § 332-40-500, filed 6/10/76; Order 257, § 332-40-500, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-520 Department responsibilities when consulted as an agency with environmental expertise. [Order 259, § 332-40-520, filed 6/10/76; Order 257, § 332-40-520, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-530 Responsibilities of the department—When predraft consultation has occurred. [Order 259, § 332-40-530, filed 6/10/76; Order 257, § 332-40-530, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-535 Cost of performance of consulted agency responsibilities. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-535, filed 4/11/78; Order 259, § 332-40-535, filed 6/10/76; Order 257, § 332-40-535, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-540 Limitations on responses to consultation. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-540, filed 4/11/78; Order 259, § 332-40-540, filed 6/10/76; Order 257, § 332-40-540, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-545 Effect of no written comment. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-545, filed 4/11/78; Order 259, § 332-40-545, filed 6/10/76; Order 257, § 332-40-545, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-570 Preparation of the final EIS—Contents—When no critical comments received on the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-570, filed 4/11/78; Order 259, § 332-40-570, filed 6/10/76; Order 257, § 332-40-570, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-580 Preparation of the final EIS—Contents—When critical comments received on the draft EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-580, filed 4/11/78; Order 259, § 332-40-580, filed 6/10/76; Order 257, § 332-40-580, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-600 Circulation of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-600, filed 4/11/78; Order 259, § 332-40-600, filed 6/10/76; Order 257, § 332-40-600, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-650 Effect of an adequate final EIS prepared pursuant to NEPA. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-650, filed 4/11/78; Order 259, § 332-40-650, filed 6/10/76; Order 257, § 332-40-650, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-652 Supplementation by the department of an inadequate final NEPA EIS. [Order 259, § 332-40-652, filed 6/10/76; Order 257, § 332-40-652, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-660 Use of previously prepared EIS for a different proposed action. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-660, filed 4/11/78; Order 259, § 332-40-660, filed 6/10/76; Order 257, § 332-40-660, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-690 Use of another lead agency's EIS by the department for the same proposal. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-690, filed 4/11/78; Order 259, § 332-40-690, filed 6/10/76; Order 257, § 332-40-690, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-695 Draft and final supplements to a revised EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-695, filed 4/11/78; Order 259, § 332-40-695, filed 6/10/76; Order 257, § 332-40-695, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-700 EIS combined with existing planning and review processes. [Order 259, § 332-40-700, filed 6/10/76; Order 257, § 332-40-700, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-710 No action for seven days after publication of the final EIS. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-710, filed 4/11/78.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-800 Amendments to this chapter. [Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810. 78-05-015 (Order 292), § 332-40-800, filed 4/11/78; Order 259, § 332-40-800, filed 6/10/76; Order 257, § 332-40-800, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-830 SEPA public information center. [Order 259, § 332-40-830, filed 6/10/76; Order 257, § 332-40-830, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-835 Regional SEPA public information centers. [Order 259, § 332-40-835, filed 6/10/76; Order 257, § 332-40-835, filed 5/21/76.] Repealed by 78-05-015 (Order 292), filed 4/11/78. Statutory Authority: RCW 43.21C.120, WAC 197-10-800 and 197-10-810.

332-40-840 Application of agency guidelines to ongoing actions. [Order 259, § 332-40-840, filed 6/10/76; Order 257, § 332-40-840, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

332-40-910 Severability. [Order 259, § 332-40-910, filed 6/10/76; Order 257, § 332-40-910, filed 5/21/76.] Repealed by 84-18-052 (Order 432), filed 9/5/84. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150.

Chapter 332-44
STRAY LOGS

332-44-010 Stray logs—Possession marks. [Resolution No. 1, filed 1/27/65.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-020 Log patrol—Activity in Everett harbor. [Docket 255, § 1, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-030 Closed portion of Everett harbor. [Docket 255, § 2, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-040 Closed portion of Everett harbor—Exception. [Docket 255, § 3, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-050 Closed portion of Everett harbor—Licensed log patrolmen—Duties. [Docket 255, § 4, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-060 Closed portion of Everett harbor—Opening closed area—Notice. [Docket 255, § 5, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-070 Closed portion of Everett harbor—Violations—Penalty. [Docket 255, § 6, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-080 Closed portion of Everett harbor—Supersession of prior agreements. [Docket 255, § 7, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

332-44-090 Severability. [Docket 255, § 8, filed 10/28/66.] Repealed by 05-01-116, filed 12/15/04, effective 1/15/05. Statutory Authority: Chapter 76.40 RCW (repealed).

Chapter 332-48
FIRE AND GAME DAMAGE

332-48-010 Electrical fence controllers. [Resolution No. 54, filed 6/3/64.] Repealed by 91-20-060 (Order 583), filed 9/24/91, effective 10/16/91. Statutory Authority: RCW 76.04.015.

332-48-020 Unauthorized use of Colockum airstrip. [Resolution No. 44, filed 11/5/63.] Repealed by 91-20-060 (Order 583), filed 9/24/91, effective 10/16/91. Statutory Authority: RCW 76.04.015.

332-48-050 Fire rules. [Resolution 21, filed 6/6/61.] Repealed by Order 256, filed 5/13/76. Later promulgation, see WAC 332-24-061.

Chapter 332-08 WAC
PRACTICE AND PROCEDURE

WAC

332-08-005 Adoption of model rules of procedure.
332-08-015 Definitions.
332-08-025 Inapplicability to proprietary decisions.
332-08-105 Adjudicative proceedings—Application.
332-08-115 Application for adjudicative proceeding—Time limit.
332-08-125 Application for adjudicative proceeding—Place of filing.
332-08-305 Exhibits.
332-08-315 Burden of proof.
332-08-405 Petitions for review of initial orders—Final orders.
332-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data.
332-08-505 Brief adjudicative proceedings—Matters to which subject.
332-08-515 Brief adjudicative proceedings—Application procedure.
332-08-525 Brief adjudicative proceedings—Hearing.
332-08-535 Brief adjudicative proceedings—Decision.
332-08-545 Brief adjudicative proceedings—Review.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-08-010 Appearance and practice before agency—Who may appear. [Regulation .08.010, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-020 Appearance and practice before agency—Appearance in certain proceedings may be limited to attorneys. [Regulation .08.020, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-040 Appearance and practice before agency—Standards of ethical conduct. [Regulation .08.040, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-050 Appearance and practice before agency—Appearance by former employee of department or former member of the attorney general's staff. [Regulation 08.050, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-060 Appearance and practice before agency—Former employee as expert witness. [Regulation .08.060, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-070 Computation of time. [Regulation .08.070, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-080 Notice and opportunity for hearing in contested cases. [Regulation .08.080, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-090 Service of process—By whom served. [Regulation .08.090, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-100 Service of process—Upon whom served. [Regulation .08.100, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-110 Service of process—Service upon parties. [Regulation .08.110, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-120 Service of process—Method of service. [Regulation .08.120, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-130 Service of process—When service complete. [Regulation .08.130, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-140 Service of process—Filing with agency. [Regulation .08.140, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-150 Subpoenas where provided by law—Form. [Regulation .08.150, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-160 Subpoenas where provided by law—Issuance to parties. [Regulation .08.160, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-170 Subpoenas where provided by law—Service. [Regulation .08.170, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-180 Subpoenas where provided by law—Fees. [Regulation .08.180, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-190 Subpoenas where provided by law—Proof of service. [Regulation .08.190, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-200 Subpoenas where provided by law—Quashing. [Regulation .08.200, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-210 Subpoenas where provided by law—Enforcement. [Regulation .08.210, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-220 Subpoenas where provided by law—Geographical scope. [Regulation .08.220, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-230 Depositions and interrogatories in contested cases—Right to take. [Regulation .08.230, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-240 Depositions and interrogatories in contested cases—Scope. [Regulation .08.240, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-250 Depositions and interrogatories in contested cases—Officer before whom taken. [Regulation .08.250, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-260 Depositions and interrogatories in contested cases—Authorization. [Regulation .08.260, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-270 Depositions and interrogatories in contested cases—Protection of parties and deponents. [Regulation .08.270, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-280 Depositions and interrogatories in contested cases—Oral examination and cross-examination. [Regulation .08.280, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-290 Depositions and interrogatories in contested cases—Recordation. [Regulation .08.290, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-300 Depositions and interrogatories in contested cases—Signing attestation and return. [Regulation .08.300, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-310 Depositions and interrogatories in contested cases—Use and effect. [Regulation .08.310, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-320 Depositions and interrogatories in contested cases—Fees of officers and deponents. [Regulation .08.320, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-330 Depositions upon interrogatories—Submission of interrogatories. [Regulation .08.330, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-340 Depositions upon interrogatories—Interrogation. [Regulation .08.340, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-350 Depositions upon interrogatories—Attestation and return. [Regulation .08.350, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-360 Depositions upon interrogatories—Provisions of deposition rule. [Regulation .08.360, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-370 Official notice—Matters of law. [Regulation .08.370, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-380 Official notice—Material facts. [Regulation .08.380, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-390 Presumptions. [Regulation 08.390, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-400 Stipulations and admissions of record. [Regulation .08.400, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-410 Form and content of decisions in contested cases. [Regulation .08.410, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-420 Definition of issues before hearing. [Regulation .08.420, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-430 Prehearing conference rule. [Regulation .08.430, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-440 Prehearing conference rule—Record of. [Regulation .08.440, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-450 Submission of documentary evidence in advance. [Regulation .08.450, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-460 Excerpts from documentary evidence. [Regulation .08.460, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-470 Expert or opinion testimony and testimony based on economic and statistical data—Number and qualifications of witnesses. [Regulation .08.470, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-480 Expert or opinion testimony and testimony based on economic and statistical data—Written sworn statements. [Regulation .08.480, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-500 Expert or opinion testimony and testimony based on economic and statistical data—Effect of noncompliance with WAC 332-08-470 or 332-08-480. [Regulation .08.500, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-510 Continuances. [Regulation .08.510, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-520 Rules of evidence—Admissibility criteria. [Regulation .08.520, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-530 Rules of evidence—Tentative admission—Exclusion—Discontinuance—Objections. [Regulation 08.530, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-540 Petitions for rule making, amendment, or repeal—Who may petition. [Regulation .08.540, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-550 Petitions for rule making, amendment, or repeal—Requisites. [Regulation .08.550, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-560 Petitions for rule making, amendment, or repeal—Agency must consider. [Regulation .08.560, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-570 Petitions for rule making, amendment, or repeal—Notice of disposition. [Regulation .08.570, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-580 Declaratory rulings. [Regulation .08.580, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

332-08-590 Forms. [Regulation 08.590, filed 2/7/61.] Repealed by 91-13-059 (Order 573), filed 6/17/91, effective 7/18/91. Statutory Authority: RCW 34.05.220 (1)(a).

WAC 332-08-005 Adoption of model rules of procedure. In adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476, the department of natural resources adopts the model rules of procedure adopted by the chief administrative law judge pursuant to RCW 34.05.250, as now or hereafter amended. Those rules are contained in chapter 10-08 WAC. Other rules adopted in this chapter supplement those model rules. Where the rules of this chapter conflict with those of chapter 10-08 WAC, the rules of this chapter shall govern.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-005, filed 6/17/91, effective 7/18/91.]

WAC 332-08-015 Definitions. (1) "BAP" means "brief adjudicative proceeding" as described in RCW 34.05.482 through 34.05.494.

(2) "Department" means the department of natural resources.

(3) Where the rules of this chapter use words defined in RCW 34.05.010, those definitions shall govern.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-015, filed 6/17/91, effective 7/18/91.]

WAC 332-08-025 Inapplicability to proprietary decisions. Under RCW 34.05.010(3), no sales, leases, contracts, or other proprietary decisions in the management of public lands or real property interests are agency actions that are the subject of adjudicative proceedings. Accordingly, the department will not commence adjudicative proceedings for propri-

etary decisions, including, but not limited to, actions taken under the terms of geoduck harvesting agreements, aquatic lands leases, easements, rights of way, permits to use state-owned land and resources, timber sale contracts, mineral prospecting leases, mining contracts, or other proprietary agreements to which the department is a party, unless the agreement specifically provides otherwise.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-025, filed 6/17/91, effective 7/18/91.]

WAC 332-08-105 Adjudicative proceedings—Application. An application for an adjudicative proceeding before the department under RCW 34.05.413 through 34.05.476 must be in writing, and must be signed by the applicant or the applicant's representative. The application must specify the factual basis for appeal and the issue to be adjudicated in the proceeding.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-105, filed 6/17/91, effective 7/18/91.]

WAC 332-08-115 Application for adjudicative proceeding—Time limit. Time limits for filing applications for adjudicative proceedings shall be as follows:

(1) An application for an adjudicative proceeding concerning the disapproval of a reclamation plan under RCW 78.44.100 must be filed with the department within thirty days of the date of disapproval.

(2) An application for an adjudicative proceeding concerning a civil penalty issued under RCW 78.44.160 must be filed with the department within thirty days of the date the applicant receives the civil penalty notice, or within thirty days of the date the applicant receives the department's notice of disposition of an application for remission or mitigation of the civil penalty.

(3) Applications for adjudicative proceedings concerning notices to comply issued under RCW 76.09.090 and WAC 222-46-030 (forest practices), performance bond permit adjustments under RCW 78.44.120 (surface mining), and notices of deficiency issued under RCW 78.44.140 (surface mining) are governed by WAC 332-08-515.

(4) In all other cases, unless otherwise provided by statute, applications for adjudicative proceedings must be filed with the department within thirty days of the action that is the subject of the appeal.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-115, filed 6/17/91, effective 7/18/91.]

WAC 332-08-125 Application for adjudicative proceeding—Place of filing. (1) An application for adjudicative proceeding concerning surface mining operations under chapter 78.44 RCW must be filed at the following address:

ATTN: Regulatory Programs Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(2) An application for adjudicative proceeding concerning the revocation of permission to install and maintain a private recreational dock under RCW 79.90.105 and WAC 332-30-144 must be filed at the following address:

Division Manager
Division of Aquatic Lands
Department of Natural Resources
P.O. Box 47027
Olympia, WA 98504-7027

(3) Applications for adjudicative proceedings concerning notices to comply issued under RCW 76.09.090 and WAC 222-46-030 (forest practices), performance bond permit adjustments under RCW 78.44.120 (surface mining), and notices of deficiency issued under RCW 78.44.140 (surface mining) are governed by WAC 332-08-515.

(4) Applications for adjudicative proceedings in all other cases must be filed at the following address:

Office of the Supervisor
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

[Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-125, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-125, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-125, filed 6/17/91, effective 7/18/91.]

WAC 332-08-305 Exhibits. Any party intending to offer documentary evidence during the hearing shall prepare two copies of each document to be offered, and shall furnish one copy to the opposing party no later than the date set for the hearing. The presiding officer may exclude from evidence documents that fail to conform to this requirement, unless the offering party shows good cause for the failure.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-305, filed 6/17/91, effective 7/18/91.]

WAC 332-08-315 Burden of proof. (1) Unless otherwise ordered by the presiding officer or required by law, the burden of proof in adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476 shall be as follows:

(a) In proceedings concerning the denial of an application for a surface mining permit or disapproval of a reclamation plan under RCW 78.44.100, the applicant has the burden of proof.

(b) In proceedings concerning the modification of a reclamation plan under RCW 78.44.100, the department has the burden of proof.

(c) In proceedings concerning a permit cancellation under RCW 78.44.140, the department has the burden of proof.

(d) In civil penalty proceedings and proceedings concerning stop work orders under RCW 78.44.160, the department has the burden of proof.

(e) In proceedings concerning a declaration of abandonment under RCW 78.44.030(3), the department has the burden of proof.

(f) In proceedings concerning the revocation of permission to install and maintain a private recreational dock under RCW 79.90.105 and WAC 332-30-144, the department has the burden of proof.

(g) In all other cases, the proponent of an order has the burden of proof.

(2) Unless otherwise ordered by the presiding officer or required by law, the standard of proof in adjudicative proceedings pursuant to RCW 34.05.413 through 34.05.476 shall be a preponderance of the evidence.

[Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-315, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-315, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-315, filed 6/17/91, effective 7/18/91.]

WAC 332-08-405 Petitions for review of initial orders—Final orders. (1) Except in brief adjudicative proceedings, initial orders in all adjudicative proceedings before the department will become final without further action by the department unless, within twenty days of the date of service of the initial order, a petition for review is filed at the address given below:

Office of the Supervisor
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

The provisions of WAC 10-08-211 apply to petitions for review of initial orders.

(2) WAC 332-08-545 governs review of orders in brief adjudicative proceedings.

[Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-405, filed 10/2/92, effective 11/2/92; 91-13-059 (Order 573), § 332-08-405, filed 6/17/91, effective 7/18/91.]

WAC 332-08-490 Expert or opinion testimony and testimony based on economic and statistical data—Supporting data. That the hearing examiner or other appropriate officer, in his discretion but consistent with the rights of the parties, cause the parties to make available for inspection in advance of the hearing, and for purposes of cross-examination at the hearing, the data underlying statements and exhibits submitted in accordance with WAC 332-08-480, but, wherever practicable that he restrict to a minimum the placing of such data in the record.

[Regulation .08.490, filed 2/7/61.]

WAC 332-08-505 Brief adjudicative proceedings—Matters to which subject. The department adopts the provisions of RCW 34.05.482 through 34.05.494 for the matters listed in this section. The department may use brief adjudicative proceedings (BAPs) where their use will violate no provision of law and where protection of the public interest does not require the department to give notice and an opportunity to participate to persons other than the parties. The department may use BAPs for the following matters:

(1) Review of notices to comply issued under RCW 76.09.090 and WAC 222-46-030.

(2) Review of performance bond amount adjustments under RCW 78.44.120, where the performance bond amount is specified in an operating permit issued under RCW 78.44.100.

(3) Review of notices of deficiency issued under RCW 78.44.140.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-505, filed 6/17/91, effective 7/18/91.]

WAC 332-08-515 Brief adjudicative proceedings—Application procedure. (1) An application for a BAP must be in writing, and must specify the factual basis for appeal and the issue to be adjudicated in the proceeding.

(2) An application for a BAP concerning a notice to comply issued under RCW 76.09.090 and WAC 222-46-030 must be filed within fifteen days after the date of service of the notice to comply. The application must be filed at the following address:

Office of the Supervisor
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

(3) An application for a BAP concerning a performance bond permit adjustment under RCW 78.44.120 must be filed within fifteen days after service of the notice adjusting the performance bond amount specified in the operating permit. The application must be filed with the department's region office that issued the notice. A list of the department's region offices and their addresses appears in WAC 332-10-030. The application should be addressed to the attention of the surface mining contact person. Upon receiving an application for a BAP concerning a performance bond permit adjustment, the department may choose to use the formal procedures of RCW 34.05.413 through 34.05.476 and WAC 332-08-005 through 332-08-405, and may choose not to use BAP procedures.

(4) An application for a BAP concerning a notice of deficiency issued under RCW 78.44.140 must be filed within fifteen days after service of the notice of deficiency. The application must be filed with the department's region office that issued the notice. A list of the department's region offices and their addresses appears in WAC 332-10-030. The application should be addressed to the attention of the surface mining contact person. Upon receiving an application for a BAP concerning a notice of deficiency, the department may choose to use the formal procedures of RCW 34.05.413 through 34.05.476 and WAC 332-08-005 through 332-08-405, and may choose not to use BAP procedures.

[Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-515, filed 10/2/92, effective 11/2/92; 92-01-027 (Order 587), § 332-08-515, filed 12/6/91, effective 1/6/92; 91-13-059 (Order 573), § 332-08-515, filed 6/17/91, effective 7/18/91.]

WAC 332-08-525 Brief adjudicative proceedings—Hearing. (1) In BAPs concerning notices to comply issued under RCW 76.09.090 and WAC 222-46-030, the department shall schedule a hearing on a date not more than 20 days after receiving an application for a BAP.

(2) In all other brief adjudicative proceedings, the department shall, within ten days of receiving an application for a BAP, schedule a hearing.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-525, filed 6/17/91, effective 7/18/91.]

WAC 332-08-535 Brief adjudicative proceedings—Decision. (1) Within ten days of a hearing on a notice to comply issued under RCW 76.09.090 and WAC 222-46-030, the

department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by the applicant.

(2) In all other brief adjudicative proceedings, within ten days of the hearing, the presiding officer shall serve upon each party an initial order, containing a brief written statement of the department's decision and the reasons for the decision.

[Statutory Authority: RCW 34.05.220 (1)(a). 91-13-059 (Order 573), § 332-08-535, filed 6/17/91, effective 7/18/91.]

WAC 332-08-545 Brief adjudicative proceedings—Review. (1) The operator, forest land owner, or timber owner subject to a final order of the department on a notice to comply issued under RCW 76.09.090 and WAC 222-46-030 may, within thirty days from the date of the order, appeal to the forest practices appeals board. The provisions of chapter 223-08 WAC govern such appeals.

(2) In all other brief adjudicative proceedings, a party affected by an initial order of the department may request administrative review of the initial order. A request for administrative review must be writing, and must be filed at the following address within twenty-one days after the date of service of the initial order:

Office of the Supervisor
Department of Natural Resources
P.O. Box 47001
Olympia, WA 98504-7001

The initial order becomes a final order if no review is taken.

[Statutory Authority: RCW 34.05.220 (1)(a). 92-20-058 (Order 604), § 332-08-545, filed 10/2/92, effective 11/2/92; 91-13-059 (Order 573), § 332-08-545, filed 6/17/91, effective 7/18/91.]

Chapter 332-10 WAC

PUBLIC RECORDS—DEPARTMENT OF NATURAL RESOURCES AND BOARD OF NATURAL RESOURCES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-10-035 Description of organization of board of natural resources. [Order 262, § 332-10-035, filed 6/16/76.] Repealed by 91-14-014 (Order 574), filed 6/24/91, effective 7/25/91. Statutory Authority: RCW 34.05.-220, 34.05.230 and 42.17.250.

332-10-045 Operations and procedures of board of natural resources. [Order 262, § 332-10-045, filed 6/16/76.] Repealed by 91-14-014 (Order 574), filed 6/24/91, effective 7/25/91. Statutory Authority: RCW 34.05.-220, 34.05.230 and 42.17.250.

332-10-135 Records index for the board. [Order 262, § 332-10-135, filed 6/16/76.] Repealed by 91-14-014 (Order 574), filed 6/24/91, effective 7/25/91. Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250.

332-10-150 Promulgation. [Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-150, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.-088 and 79.01.720.

332-10-160 Definition. [Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-160, filed 11/13/80.] Repealed by 83-24-055 (Order 406), filed 12/6/83. Statutory Authority: RCW 79.01.088 and 79.01.720.

WAC 332-10-010 Purpose of rules. The purpose of this chapter shall be to insure compliance by the department of natural resources and the board of natural resources with the provisions of chapter 42.17 RCW, Disclosure—Campaign finances—Lobbying—Records, and in particular with RCW 42.17.250 through 42.17.340 of that act dealing with public records.

[Order 262, § 332-10-010, filed 6/16/76.]

WAC 332-10-020 Definition. The following definitions shall apply in this chapter:

(1) "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics. See RCW 42.17.020 (26).

(2) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents. See RCW 42.17.-020(28).

(3) "Board" means the board of natural resources, a policy setting board whose six members serve in an ex officio capacity. The duties of the board are described in RCW 43.30.150.

(4) "Department" means the department of natural resources which is:

(a) A regulatory agency with regard to geology activities on state and privately owned land, and outdoor burning on state and privately owned forest land,

(b) A proprietary land management agency for state owned land under the jurisdiction of the department,

(c) A service and information repository agency regarding surveys and maps of the state, farm forestry advice and general geology information,

(d) An agency that administers and enforces state forest protection laws and the forest practices regulations of the forest practices board and the department of ecology on state and privately owned forest land.

(5) "Commissioner" means the commissioner of public lands who is an elected official and serves as the administrator of the department. The commissioner, in accordance with RCW 43.30.170, has delegated to the supervisor of the department the direct supervision of the department activities.

(6) "Supervisor" means one or more supervisor(s) of natural resources.

[Statutory Authority: RCW 43.30.020, 43.30.170, 42.17.250, 34.05.220. 01-07-049 (Order 705), § 332-10-020, filed 3/16/01, effective 4/16/01. Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-020, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-020, filed 6/16/76.]

WAC 332-10-030 Description of organization of department of natural resources. (1) The department of natural resources consists of a board of natural resources, an administrator, and a supervisor. The administrative office of the department and its staff are located in Olympia, Washington 98504. Field offices of the department are located at:

Region Office	Address
Olympic	Rt. 1, Box 1375, Forks, WA 98331
Northwest	919 North Township Street, Sedro Woolley, WA 98284
South Puget Sound	28329 SE 448th St., Enumclaw, WA 98022
Central	1405 Rush Road, Chehalis, WA 98532
Southwest	601 Bond Road, Castle Rock, WA 98611
Southeast	713 East Bowers Road, Box 280, Ellensburg, WA 98926
Northeast	225 South Silke Road, Colville, WA 99114

(2) Map.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-030, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-030, filed 6/16/76.]

WAC 332-10-040 Operations and procedures of the department of natural resources. (1) The legal authority for the department's activities is provided principally by:

(a) The State Enabling Act, Section Nos. 10 through 19;

(b) The state Constitution, Article Nos. III, XV, XVI, XVII and Amendment No. 15;

(c) The Revised Code of Washington, Title Nos. 43, 46, 58, 70, 76, 78, 79 and 84;

(d) The Washington Administrative Code, Title Nos. 222 and 332.

(2) The commissioner and the board acting under their respective legal authorities determine policy for the department. The supervisor of the department:

(a) Provides direct supervision over the department's activities.

(b) Implements department policy through a line-functional staff comprised of several divisions and seven regional offices. The divisions develop operational programs and procedures within their respective specialties of resource management. These programs and procedures are carried out through the seven regional offices.

[Statutory Authority: RCW 43.30.020, 43.30.170, 42.17.250, 34.05.220. 01-07-049 (Order 705), § 332-10-040, filed 3/16/01, effective 4/16/01. Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-040, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-040, filed 6/16/76.]

WAC 332-10-041 Meetings of board of natural resources. (1) Regular meetings of the board of natural resources shall be held on the first Tuesday of every month except August. If a regular meeting falls on a holiday, such regular meeting shall be held on the next business day. A schedule of meetings will be published in the Washington Register in January of each year. Changes to the schedule will be published in the state register pursuant to RCW 42.30.075. Special meetings may be held pursuant to RCW 42.30.080. Any person may obtain information about locations and meeting times by contacting the Department of Natural Resources, P.O. Box 47001, Olympia, Washington 98504-7001. The public is invited to attend and comment at all meetings.

(2) Members of the board of natural resources may participate by telephone in any regular or special meeting so long as a speaker phone is available at the public meeting location. To assure that all discussions comply with RCW 42.30.030, if more than one board member is participating by telephone, then each such board member shall use a separate telephone line or a separate telephone. If other electronic means of attending meetings from remote locations are available, board members may employ these means so long as board discussion can be heard by those attending the public meeting consistent with the Open Public Meetings Act RCW 42.30. Board members participating by telephone or other electronic means may vote on any matter and shall be considered as part of the quorum.

[Statutory Authority: RCW 43.30.150 (5), (6), (9), and 42.30.030. 02-19-058 (Order 707), § 332-10-041, filed 9/12/02, effective 10/13/02. Statutory Authority: RCW 43.30.150 and 42.30.070. 92-20-060 (Order 606), § 332-10-041, filed 10/2/92, effective 11/2/92.]

WAC 332-10-050 Public records available. All public records of the department are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.310 and other laws.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-050, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-050, filed 6/16/76.]

WAC 332-10-060 Public records officer for the department of natural resources. (1) The public records officer for the department is designated as the chief lands recorder located in the department's administrative office. The public records officer shall be responsible for the following: The implementation of the department's rules and regulations regarding release of public records, coordinating the staff of the department in this regard, and generally insuring

compliance by the staff with the public records disclosure requirements of chapter 42.17 RCW.

(2) Additional public record officers may be designated for specific offices within the department:

(a) The secretary of the commissioner is designated as the public records officer for the board.

(b) The office manager located in each of the regional offices is designated as the public records officer for region office records.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-060, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-060, filed 6/16/76.]

WAC 332-10-065 Public records officer for the board of natural resources. The public records officer for the board is designated as the secretary of the commissioner.

[Order 262, § 332-10-065, filed 6/16/76.]

WAC 332-10-070 Office hours. Public records shall be available for inspection and copying during the customary office hours of the department. For the purpose of this chapter, the customary office hours shall be from 8:00 a.m. until noon and from 1:00 p.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. Such inspection and copying may be postponed if, in the department's opinion, it would interfere with duties related to an emergency at a regional office or the fire control division in central headquarters.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-070, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-070, filed 6/16/76.]

WAC 332-10-080 Requests for public records. Public records may be inspected or copied, or copies of such records may be obtained by members of the public, upon compliance with the following procedures:

(1) Inquiry for general information regarding department activities may be directed to the administrative office or any regional office.

(2) A request for specific public records shall be made in writing upon a form prescribed by the department which shall be available at its administrative and regional offices. The form shall be presented to the public records officer, during customary office hours. The request shall include the following information:

(a) The name and address of the person requesting the record and the organization they represent;

(b) The time of day and calendar date on which the request was made;

(c) A description of the material requested.

(3) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.

(4) The department will also honor requests received by mail for identifiable public records unless exempted.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-080, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-080, filed 6/16/76.]

WAC 332-10-090 Copying. No fee shall be charged for the inspection of public records. For printed, typed and written material of a maximum size of 8 1/2" by 14", the department shall charge a reasonable fee determined from time to time by the department for providing copies of public records and for use of the department's copy equipment, payable at the time copies are furnished. This charge is the amount necessary to reimburse the department for its actual costs incident to such copying. Copies of maps, photos, reports and other nonstandard items shall be furnished at the regular price established by the department. When other special copy work of nonstandard items is requested, the fee charged will reflect the total cost including the time of department personnel.

[Order 262, § 332-10-090, filed 6/16/76.]

WAC 332-10-100 Exemptions. (1) The department reserves the right to determine that a public record requested is exempt under the provisions of RCW 42.17.310.

(2) In addition, pursuant to RCW 42.17.260, the department reserves the right to delete identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 42.17 RCW. The public records officer will fully justify such deletion in writing.

(3) All public records otherwise exempt by law shall be considered exempt under the provision of these rules.

(4) All denials of requests for public records will be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

(5) The department recognizes that the preservation of personal rights is of paramount importance. Accordingly, the department policy shall be to conduct the disclosure of public records in such a manner to preserve the personal privacy of all department personnel. The policy shall extend to companies and individuals from outside the department whose records come into possession of the department.

The exemptions of this section shall be inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption shall be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

Inspection or copying of any specific records, exempt under the provisions of this section, may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the department, that the exemption of such records, is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-100, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-100, filed 6/16/76.]

WAC 332-10-105 Statement of reason for denial of request for records. When the department or board refuses, in whole or part, inspections of any public record, it shall include a statement of the specific exemption authorizing the

withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld.

[Order 262, § 332-10-105, filed 6/16/76.]

WAC 332-10-110 Reviews of denials of public records requests. (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the supervisor of the department. The supervisor or his designee shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the department has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

[Order 262, § 332-10-110, filed 6/16/76.]

WAC 332-10-120 Protection of public records. In order to adequately protect the public records in the custody of the department, the following guidelines shall be adhered to by any person inspecting such public records:

(1) No public records shall be removed from the department's premises.

(2) Inspection of any public record shall be conducted in the presence of a designated department employee.

(3) No public records may be marked or defaced in any manner during inspection.

(4) Public records which are maintained in a file or jacket, or chronological order, may not be dismantled except for purposes of copying and then only by a designated employee of the department.

(5) Access to file cabinets, shelves, vaults, etc., is restricted to the department.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-120, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-120, filed 6/16/76.]

WAC 332-10-130 Records index for the department. (1) The department maintains the following methods to index its records:

(a) Tract books. Indicate all significant transactions since statehood concerning the disposition and management of state lands. Is organized by legal description, i.e., section - township - range. The tract book is located in the office of the chief lands recorder.

(b) Commissioner and department orders. Indexed from 1975 to present by year and order number. Commissioner and department orders contain and indicate subject and/or file jacket number.

(c) Board meeting index. Board meetings are tape recorded and written minutes prepared. These are indexed by date and are available for inspection through the public records officer in the commissioner's office.

(d) Administrative rule docket. The department has historically maintained an index of administrative rules adopted by the department. It is formatted by: Date, department rule number, subject, and contact person. Beginning in 1990 the format was expanded to conform with the requirements of RCW 34.05.315. This index is located in the office of the chief lands recorder.

(e) To conform with RCW 42.17.260(4), the following indexes and files are maintained by the chief lands recorder in the department's administrative office:

(i) All records issued before July 1, 1990, for which the department has maintained an index;

(ii) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010(1) and that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(iii) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the department in carrying out its duties;

(iv) Interpretive statements as defined in RCW 34.05-.010(8) that were entered after June 30, 1990; and

(v) Policy statements as defined in RCW 34.05.010(14) that were entered after June 30, 1990.

Copies of all indexes shall be available for public inspection and copying during business hours and in accordance with WAC 332-10-080. The indexes shall be kept current and updated annually. Selected final and declaratory orders that contain an analysis or decision of substantial importance to the agency in carrying out its duties, and interpretive and policy statements will be indexed chronologically by date, applicable program, hearing title, description of subject matter, citation to the law involved, or a selected combination of these, as appropriate.

(f) Rule-making file. To conform with RCW 34.05.370, the department maintains an official rule-making file for each rule that the department proposes by publication in the state register or adopts. Some rules apply to specific programs within the department, while others, such as those adopted under the State Environmental Policy Act and the Administrative Procedure Act, apply department-wide. The administrative offices of divisions that administer specific programs maintain the rule-making files that apply to those programs. The department rules coordinator maintains the rule-making files for rules that apply department-wide.

(g) Department manual. The department maintains a comprehensive policy and procedures manual. The manual describes policy statements and procedures used to implement the department's various responsibilities. It is organized by program activity, i.e., fire control, timber sales, etc. Manuals are available for review at the department's administrative or any regional office.

(h) Bibliography of department publications. It is common practice for the department to publish important policy and management plans as well as reports on specific subjects regarding resource management. The bibliography can be obtained through the department's Photo and Distribution

Center, 1065 S. Capitol Way, Olympia, WA 98504, or any regional office.

(2) The department does not use a central filing system. Records are maintained in each of the regional offices spread throughout the state and in each of the divisions in the administrative office. Each organizational unit maintains a record system to meet its specific needs. The department can respond to requests for records, by the public describing the type of information they are seeking. General correspondence related to governmental and regulatory activities and internal services can usually be identified by subject and usually in the division responsible for that activity. Regulatory permits and licenses may be identified by legal description or application number. Correspondence and other data related to proprietary activities are identified by application number and can be cross-referenced by legal description.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-130, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-130, filed 6/16/76.]

WAC 332-10-140 Address for communication requests. All communications with the department including but not limited to the submission of materials pertaining to its operations and/or the administration or enforcement of chapter 42.17 RCW, and these rules, requests for copies of the department's decisions and other matters, shall be addressed as follows: Department of Natural Resources, c/o Public Records Officer, Olympia, Washington 98504.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-140, filed 6/24/91, effective 7/25/91; Order 262, § 332-10-140, filed 6/16/76.]

WAC 332-10-145 Notification roster of interested persons. To conform with the requirements of RCW 34.05.230, the department maintains a roster of interested persons who have requested in writing to the department rules coordinator, to be notified of all interpretive and policy statements issued by the department. The roster is kept in the rules coordinator's office and is updated once each year. Persons not indicating a desire to continue on the roster will be eliminated during the yearly update. Whenever the department issues an interpretive or policy statement, a copy of the statement will be sent to each person listed on the roster.

[Statutory Authority: RCW 34.05.220, 34.05.230 and 42.17.250. 91-14-014 (Order 574), § 332-10-145, filed 6/24/91, effective 7/25/91.]

WAC 332-10-170 Fees for performing the following service. Charges for the following categories of services will be collected and transmitted to the state treasurer for deposit:

(1) Twenty-five dollars for the approval of any assignment of contract of sale, assignment of lease, assignment of bill of sale or assignment of right of way.

(2) Twenty-five dollars for the division of contracts or leases pursuant to RCW 79.01.236.

(3) Five dollars for certification of any document.

(4) Twenty-five cents per page, plus postage if mailed, for copies of documents which do not exceed 8-1/2 x 14 inches in size. May be copied by requestor or agency staff.

Up to one dollar per page, plus postage if mailed, for copies of documents when copying would unreasonably disrupt the operations of the agency, requiring uninterrupted, long-term use of agency copy equipment. Actual costs incident to such copying will be charged. Copies not to exceed 8-1/2 x 14 inches in size.

(5) Copies of documents or nonstandard items beyond the size of documents set forth in subsection (4) of this section (e.g., computer printouts, films, recordings or maps) will be charged on the basis of the cost of reproduction including the time of department personnel as determined by the department of natural resources.

[Statutory Authority: RCW 42.17.250 and 42.17.300. 92-22-076 (Order 600), § 332-10-170, filed 11/2/92, effective 12/3/92. Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-170, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-170, filed 11/13/80.]

WAC 332-10-180 Application fee. An applicant to purchase or lease any public land or valuable materials shall pay a twenty-five dollar application fee, except for oil and gas leases as specified by WAC 332-12-230.

[Statutory Authority: RCW 79.01.618, 79.01.088 and 79.01.720. 87-21-005 (Order 523, Resolution No. 571), § 332-10-180, filed 10/9/87. Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-180, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-180, filed 11/13/80.]

WAC 332-10-190 Exceptions. The following applicants are exempt from paying the fees set forth in WAC 332-10-170 and 332-10-180:

(1) Any agency, political subdivision or municipal corporation of this state, or any agency of the United States;

(2) Any lease or sale of land, valuable materials, minerals, coal, oil or gas, which is initiated by the department;

(3) Applicants for a coal mining option contract who shall instead pay the fees required by RCW 79.01.656.

(4) Assignment transferring contract or leasehold interest by operation of law.

[Statutory Authority: RCW 79.01.088 and 79.01.720. 83-24-055 (Order 406), § 332-10-190, filed 12/6/83. Statutory Authority: RCW 79.01.088. 80-17-021 (Order 349, Resolution No. 310), § 332-10-190, filed 11/13/80.]

Chapter 332-12 WAC
OIL AND GAS LEASES

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-12-010	Application for lease. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-010, filed 11/13/80; Rule (I)(1), filed 8/7/62; Rule (I)(2), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-020	Approval or rejection of applications. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-020, filed 11/13/80; Rule (I)(3), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-030	Land descriptions. [Rule (I)(4), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-040	Application for renewal of productive lease. [Rule (I)(5), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-050	Withdrawal of application. [Rule (I)(6), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), filed 11/13/80. Statutory Authority: RCW 79.01.088.
332-12-060	Offer of oil and gas leases by competitive bidding. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-060, filed 11/13/80; Rule (II), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-070	Issuance of leases. [Statutory Authority: RCW 79.01.088. 80-17-020 (Order 348, Resolution No. 311), § 332-12-070, filed 11/13/80; Rule (III), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-080	Cooperative or unit plans. [Rule (IV), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-090	Right of inspection. [Rule (V), filed 3/23/60.] Repealed by 82-23-053 (Order 387), filed 11/16/82. Statutory Authority: RCW 79.14.120.
332-12-100	Surface rights. [Rule (VI), filed 3/23/60.] Repealed by 80-17-020 (Order 348, Resolution No. 311), filed 11/13/80. Statutory Authority: RCW 79.01.088.

WAC 332-12-150 Lands not under the jurisdiction of the department of natural resources. (1) **May be leased by the commissioner.** The commissioner of public lands is authorized to execute oil and gas leases, in accordance with and by authority of chapter 79.14 RCW, upon lands of the state of Washington not under the jurisdiction of the department of natural resources.

(2) [**Competitive bid requirements.** All oil and gas leases issued under this regulation shall be issued after competitive bidding unless otherwise requested by the agency requesting issuance.]

[(3)] **Form of lease.** Oil and gas leases issued under this regulation shall contain, in addition to the statutory provisions required by chapter 79.14 RCW, further terms, conditions, covenants, and limitations necessary to maintain the suitability of the lands for their intended use after consultation with the agency having jurisdiction over such lands.

[(4)] (3) **Administrative expense.** The commissioner of public lands may enter into necessary agreements with other agencies to provide for the reimbursement of the department of natural resources for expenses reasonably incurred in oil and gas leasing under this regulation. In the absence of such an agreement, reimbursement for expenses shall be by deductions from lease revenues as authorized by RCW 79.64.040.

[(5)] (4) **Revenue from leases.** All revenue [derived] less administrative expenses from oil and gas leases issued upon lands of the state of Washington not under the jurisdiction of the department of natural resources shall be paid to the agency having jurisdiction over such lands for distribution as authorized by law.

[Statutory Authority: RCW 79.14.120. 88-20-056 (Order 554), § 332-12-150, filed 10/3/88; § 2 (part), filed 8/7/62.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 332-12-210 Definitions. The following definitions are, unless the context otherwise requires, applicable to chapter 79.14 RCW and these rules and regulations.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Associated substances" means all gaseous or liquid substances produced in association with oil or gas but shall not include coal, lignite, oilshale, similar solid hydrocarbons, minerals, water, steam or any geothermal resources.

(3) "Base lease" means the first issued lease on a tract of land prior to any assignments of the lease or renewals.

(4) "Commissioner" means the commissioner of public lands.

(5) "Completion" means the well is capable of producing oil or gas through wellhead equipment from the producing zone after the production string has been run. A dry hole shall be considered completed when the requirements for plugging and abandonment provided for in chapter 344-12 WAC have been complied with.

(6) "Continuous" as in "production in continuous paying quantities" means extracting oil and gas from the earth without cessation for a period of more than ninety days.

(7) "Department" means the department of natural resources.

(8) "Development" means work which generally occurs after exploration and furthers bringing in production including defining the extent of the oil and gas resource and construction of support facilities.

(9) "Drilling" means the drilling of a well and the activities associated therewith of permitting, staking, site preparation, testing, deepening or redrilling of the well.

(10) "Drill pads" means the location and surrounding area necessary to position a drill rig and support equipment.

(11) "Exploration" means the investigation of oil and gas resources by any geological, geophysical, geochemical or other suitable means.

(12) "Good standing" means in full compliance with all terms and conditions of the lease contract.

(13) "Hydrocarbon" means a compound containing only the two elements carbon and hydrogen.

(14) "Improvements" means anything considered a fixture in law placed upon or attached to the lease premises that has changed the value of the land or any change in the previous conditions of the fixtures that changes the value of the land.

(15) "Initial term" means the first period of time authorized under a lease or the exploration period of the lease.

(16) "In situ" means a process of in-place conversion of an energy resource in the ground by a thermal or liquifaction process in order to simplify extraction of the resource.

(17) "Lands" or "land" means both the surface and subsurface components of the lease or contract premises.

(18) "Lease premises" means public land including retained mineral rights held under an oil and gas lease.

(19) "Lessee" means any person holding an oil and gas lease.

(20) "Oil and gas" means all hydrocarbons which are present in the earth in a gaseous or liquid form and produced therefrom. It shall not include coal, lignite, oilshale, or similar solid hydrocarbons.

(21) "Paying quantities" means extraction of oil and/or gas in a sufficient amount to generate oil and gas production royalties to the state.

(22) "Person" means any natural person, corporation, association, organization, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind.

(23) "Plug and abandon" means to place permanent seals in well casings or drill holes in the manner as provided by chapter 344-12 WAC and applicable regulations and in a way and at such intervals as are necessary to prevent future contamination; to remove all equipment from the site and rehabilitate the surface to its former state or usage as prescribed by the department.

(24) "Posted field price" means the announced price at which a crude oil or gas purchaser will buy the oil or gas of specified quality from a field.

(25) "Preliminary investigation" means geological, geophysical or geochemical investigation.

(26) "Production" means extracting oil and/or gas in paying quantities.

(27) "Public auction" means competitive lease offers either by oral or sealed bidding by qualified bidders or a combination of both.

(28) "Public lands" means lands and areas belonging to or held in trust by the state including state-owned aquatic lands and lands of every kind and nature including mineral rights reserved to the state, the trust or the department.

(29) "Reclamation" means the reasonable protection and rehabilitation of all land subject to disruption from exploration, development, and production of an oil and gas resource.

(30) "Refining" means improving the physical or chemical properties of oil or gas.

(31) "Shut-in" means to adequately cap or seal a well to control the contained oil and/or gas for an interim period.

(32) "String of tools" means a cable or rotary drill rig.

(33) "Surface rights" means full fee ownership of the surface of the property and the resources on and attached thereto, not including the mineral estate.

(34) "Undivided interest" means a total assignment of the lease to one person or an assignment which causes the total lease rights to be held jointly by more than one person including but not limited to joint or common tenancy and community property.

(35) "Waste" means the physical loss of a subsurface resource through damage, escape or inefficient extraction and as defined in chapter 78.52 RCW.

(36) "Well" means any bored, drilled, or redrilled hole for the exploration or production of oil, gas, and other hydrocarbon substances.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-210, filed 3/13/86; 82-23-053 (Order 387), § 332-12-210, filed 11/16/82.]

WAC 332-12-220 Jurisdiction. These rules are applicable to all public lands of the state for which the commissioner is authorized or permitted to lease for the purpose of prospecting for, developing and producing oil, gas, or other hydrocarbon substances.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-220, filed 11/16/82.]

WAC 332-12-230 Forms. (1) Applications, leases, and related forms shall be on forms prepared and prescribed by the department.

(2) All applications shall be filed with the department. A twenty-five dollar nonrefundable application fee shall be submitted with each application.

(3) Applications for leases on aquatic lands shall describe the area with reference to the abutting upland survey. The description shall conform as nearly as practicable to extensions of the upland subdivisional lines of the United States government survey or survey lines of other recorded plats. Such descriptions shall be subject to the approval of the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-230, filed 11/16/82.]

WAC 332-12-240 Applicant. Any person may apply for and hold oil and gas leases on public lands of the state of Washington. Any applicant may acquire, receive and hold more than one lease. The department may deny an application or lease to any person, firm, or corporation for which a lease has been terminated for nonpayment of royalties or for breach of any terms or conditions.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-240, filed 11/16/82.]

WAC 332-12-250 Lease area. Leases shall not exceed the acreage specified in RCW 79.14.020: Provided, That an entire government surveyed section may be involved in a single lease. No single lease will be issued including acreage from more than one township of land except that more than one township may be included in a single lease of aquatic lands, if the total lease area does not exceed six hundred forty acres.

If the available land is less than forty acres, the lease will be issued only for the available acreage. On lands which the department manages less than the entire interest in the mineral rights, a lease may be issued by the commissioner covering the state's interest independent of the joinder of the other co-tenant where otherwise permitted.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-250, filed 11/16/82.]

WAC 332-12-260 Term of lease. Oil and gas leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall produce oil, gas or associated substances in paying quantities from the leased lands or is prosecuting development on the leased land with due diligence of a prudent operator upon encountering oil, gas or associated substances; or shall be engaged in drilling, deepening, repairing, or redrilling any well thereon; or shall be participating in a unit plan in accordance with RCW 79.14.020; or shall be prosecuting operations with due diligence of a prudent operator in accordance with RCW 79.14.050.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-260, filed 3/13/86; 82-23-053 (Order 387), § 332-12-260, filed 11/16/82.]

WAC 332-12-262 Preliminary investigation permit. Entry to state lands not currently under lease as provided in chapter 79.14 RCW is permitted for preliminary investigations by obtaining a "preliminary investigation permit" from the department and paying required fees as determined by the board of natural resources. Such permits are valid for one year from the date of issuance unless an earlier term is specified or it is revoked by the department. Permits will not be required for preliminary investigation activities that have little surface impact such as geological mapping.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-262, filed 3/13/86.]

WAC 332-12-265 Application procedures—Surface rights in other agencies. Prior to offering mineral rights under the jurisdiction of the department of natural resources for oil and gas leasing where the surface rights are either owned or leased by other state agencies, the department will notify the applicable state agency. Such notification shall be within a reasonable time period prior to leasing to permit the other agencies to consult with the department as to the advisability and conditions of lease.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-265, filed 11/16/82.]

WAC 332-12-270 Award of lease. The department shall offer land for oil and gas leasing by the following procedures:

(1) Leases shall be offered at public auction after the approval of an application or initiation by the department. Public auction shall be by sealed or oral bidding or a combination as prescribed in the notice of leasing. Oil and gas leases shall be awarded to the highest cash bonus bidder. If two or more sealed bids tie for the highest bid on an individual tract, the department shall resolve the tie by commencement of oral bidding. If no oral bids are received on such tract the tie shall be resolved by the drawing by lot from the tie bids.

(2) If no bids, sealed or oral, are received on an individual tract, the lease may be awarded to the applicant for the minimum acceptable bid subject to approval by the commissioner.

(3) All awards of leases are subject to the commissioners authority to withhold any tract or tracts of land from leasing and to reject any or all applications or bids for an oil and gas lease if determined to be in the best interest of the state.

(4) Notice of the offer of land for leasing shall be given by publication in a newspaper of general circulation in Thurston County and in such other manner as the department may authorize. Such notice shall specify the place, date, and hour of the offering, a general description of the lands to be offered for lease, and the minimum acceptable bid.

(5) Competitive bid terms. Sealed bids must be submitted prior to the time set for the auction, and must be accompanied by a certified check equal to one-fifth of the total bonus bid offered. Following award of an oral bid, a successful oral bidder is required to submit payment equal to one-fifth of total bonus bid. Unless all bids are rejected, the commissioner will send to the successful bidder two copies of the lease. The bidder will be required within thirty days after receipt thereof to execute and return the lease, pay the balance of their bonus bid, the first year's rental of one dollar twenty-five cents per acre, and all applicable taxes and other required payments. Upon failure of the successful bidder to fulfill the above requirements, the money tendered will be forfeited and the application rejected unless the department grants additional time pursuant to a written request made by the successful bidder prior to the expiration of the thirty-day period.

(6) Unsuccessful sealed bidders will be refunded their deposit. Application fees shall be refunded for applications rejected by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-270, filed 11/16/82.]

WAC 332-12-280 Lease terms. (1) Leases issued under the provisions of chapter 79.14 RCW and these rules shall be on forms prepared and prescribed by the department.

(2) Leases shall contain, where applicable, provisions implementing the rules and regulations contained in chapter 332-12 WAC.

(3) Leases shall contain, where applicable, provisions which:

(a) Protect the environment;

(b) Provide for security for faithful performance of the lease terms and conditions;

(c) Require a plan of operations;

(d) Require reclamation;

(e) Prevent waste;

(f) Provide for plugging and abandonment;

(g) Require compliance with the provisions of the Oil and Gas Conservation Act and its rules and regulations;

(h) Require the drilling of wells for the purpose of offsetting producing wells on adjoining lands;

(i) Require the lessee to furnish gas produced from the lease to state lessees for direct use where requested by the department;

(j) Relate to the surface use and resources.

(4) Leases shall contain such terms as are customary and proper for the protection of the rights of the state, the lessee and the surface owner, and necessary to insure compliance with the applicable laws and regulations.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-280, filed 11/16/82.]

WAC 332-12-290 Reserved rights. The department reserves the right to lease any subsurface resource not covered by an existing oil and gas lease: Provided, That such leasing is subject to any existing subsurface lease rights and does not materially interfere with any established lease operations. The department shall require a cooperative work agreement to allow simultaneous or coordinated operations.

The department reserves the right to allow joint or several uses of existing sites, easements, or rights of way under control of the state, upon such terms as the department may determine.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-290, filed 11/16/82.]

WAC 332-12-300 Damages to encumbered lands. The lessee shall have the right to the surface use of the premises to the extent such use is reasonably necessary for operations under the lease as provided in the plan of operations.

(1) Where surface rights have been transferred from state ownership through sale or exchange with mineral rights reserved or are leased by the state, the oil and gas lessee, prior to exercising lease rights, shall:

(a) Secure the consent or waiver of the surface-right owner or lessee regarding oil and gas lease activities; or

(b) Provide full payment for damages to the surface of said land and improvements thereon to the surface-right owner or lessee; or

(c) Secure the agreement by the surface-right owner or lessee that damages cannot be determined at this time and there shall be the execution of a good and sufficient security acceptable to the department in favor of the surface-right owner or lessee for their use and benefit to secure the payment of such damages, as may be determined and fixed by later agreement or in action brought upon the security or undertaken in a court of law against the oil and gas lessee; or

(d) Institute an action by the oil and gas lessee in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to the surface-right owner or lessee by reason of entry thereon. In the event of any such action, the term of the oil and gas lease shall begin thirty days after the entry of the final judgment and payment therefore in such action provided such action was instituted and processed within a reasonable time; or

(e) Shall furnish to the department a good and sufficient security, acceptable to the department, to cover such compensation until such compensation is determined by agreement, arbitration, or judicial decision or is otherwise authorized to be determined.

(2) Where the surface rights are owned by the state, the oil and gas lessee, prior to exercising its lease rights, shall compensate the state for damages that may occur to the surface rights as determined by the department or by another state agency where it owns both the surface and mineral rights.

The department or such agency may, in the alternative, in lieu of immediate payment, require the furnishing of adequate security for payment of all damages.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-300, filed 11/16/82.]

WAC 332-12-310 Annual rental or minimum royalty. (1) The department shall require payment of not less than one dollar twenty-five cents per acre per year in annual rental. The lessee shall pay the first year's annual rental upon execution of the lease and pay a like rental in advance each year the lease remains in force: Provided, That at any time the lease starts production, a minimum royalty of five dollars per acre per year shall replace the annual rental and shall be credited against production royalties. Minimum royalties shall be paid at the end of the lease year in which production starts and annually at the end of the lease year for the remainder of the term. When the production royalty is greater than the minimum royalty paid during any lease year, the lessee shall pay, in addition to the minimum royalty, the difference between the minimum royalty and the production royalties. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

(2) On lands which the state owns less than entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay the department rentals and minimum royalties in the amount equal to the state's undivided mineral interest percentage in such lands.

(3) If the annual rental or minimum royalty is not paid as prescribed in the lease, the lease shall be terminated as provided by RCW 79.14.090.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-310, filed 3/13/86. Statutory Authority: RCW 43.30.150(6). 83-07-039 (Order 393, Resolution No. 409), § 332-12-310, filed 3/16/83. Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-310, filed 11/16/82.]

WAC 332-12-320 Production royalties. (1) Production royalty payments shall be payable to the department for oil and gas produced from the lease premises, or in the case of gas products from gas produced but not sold, the products manufactured. Royalty rates shall be not less than twelve and one-half percent of the gross value at the point of production as defined in WAC 332-12-330. In the case of production of gas from coal deposits by "*in situ*" or other newly developed technology for which there is little or no leasing experience, the commissioner may set applicable royalty rates.

(2) The state reserves the right that, in lieu of receiving royalty payment for the market value of the state's royalty share of oil or gas, the department may elect that such royalty share of oil or gas be delivered in kind at the mouth of the well into tanks or pipelines provided by the department.

(3) On lands which the state owns less than the entire fee simple mineral rights in common tenancy (undivided interests), the lessee shall pay production royalties in the proportion which the state's interests bear to the undivided whole or an amount established by agreement between co-tenants.

(4) Payments shall be in an amount to cover all royalties due the state from production. The department may approve the use of payment bonds, savings account assignments, or other security which guarantees payment to the state. Production royalty payments shall be scheduled in the lease and plan of operations. The lessee shall furnish the department a sworn statement showing production for accounting periods required by the department and pay any royalties due.

(5) The lessee shall not sell or deliver any oil and gas or manufactured products to any person who does not agree to file purchase invoices with the department stating the price, quantity, origin of oil and gas purchased from a state lease and to allow an audit as provided by these rules. The department may require and prescribe any other methods necessary to insure a full accounting of oil and gas produced from the premises. Noncompliance with any accounting requirements may cause suspension of operation or termination as provided in WAC 332-12-400.

(6) Any past due royalty payment shall bear interest at the rate of one percent per month, compounded monthly, on the unpaid balance.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-320, filed 11/16/82.]

WAC 332-12-330 Computation of royalties. Production royalty payments shall be based upon the gross value at the point of production defined as follows:

(1) For oil. The posted field price, or, if no field price is posted, the fair market value prevailing for oil of like kind, character, quality or comparable source at the point of production. All field prices shall be approved by the department.

All royalties, whether in money or in kind, shall be delivered to the state free of cost and deductions.

Quantities of oil produced shall be determined by metering or measuring (by automatic custody transfer meter, tank gauge, or other approved method) at the first point of transfer it is in a condition of pipeline quality which shall be considered the point of production.

(2) For gas or other hydrocarbons. The posted field price or if no field price is posted, the fair market value prevailing for gas of like kind, character or comparable source at the point of production. All field prices shall be approved by the department. These royalties shall be delivered to the state free of costs and deductions.

If gas is not sold but is used by the lessee for the manufacture of gasoline or other products, the fair market price at point of sale shall be used for these products, less reasonable deductions for refining costs, as determined by the department.

(3) All prices shall be approved by the department.

(4) Quantity of gas produced shall be determined by metering or measuring at the point where it is first accurately metered or measured on or near the lease premises from which it is recovered. Where it is considered to be merchantable or pipeline quality shall be considered the point of production, less any quantities reinjected into a reservoir in the same field for purposes of repressuring and conservation. The quantity of gas products shall be determined by metering at the point of delivery for sale by the lessee.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-330, filed 11/16/82.]

WAC 332-12-340 Unit plans. The holder(s) of any oil and gas leases may apply to the department to unite with each other or with other entities, including lands not owned by the state, to collectively adopt and operate under a unit plan.

(2) To implement a plan and protect the state's interest, the commissioner may alter the terms and conditions of the lease(s) so involved with the consent of the leaseholder(s). Authorization by the department to include state leases in unit plans shall be conditioned on the following requirements:

(a) There shall be submitted to the department a plat showing the area to be unitized, together with geological and other information in support of the delineation of the area.

(b) A preliminary draft of the plan shall be submitted to the department for approval.

(c) If the plan is approved by the department, the proponent of the plan shall deliver one copy to the department when fully executed.

(d) Leases which are only partially covered by unit plans shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(e) The term of any lease that has become the subject of a unit plan as approved by the department shall continue in force until the termination of such plan. In the event that such plan is terminated prior to the expiration of any such leases, the original term of the lease shall continue.

(f) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system and the right of the department to audit such system to protect the interests of the state.

(g) Operations and production under a single unit plan shall be considered the operations and production of all leases included under the plan. Due diligence performed on any part of an area under a unit plan, may be credited by the department toward the requirement for all state leases included in the unit.

(3) Agreements for a cooperative or unit plan of development of an oil and gas pool, field or like area or any part thereof shall comply with the provisions of RCW 78.52.370. All unit or cooperative plans containing lands leased under the provisions of chapter 79.14 RCW require approval and consent by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-340, filed 11/16/82.]

WAC 332-12-350 Performance security. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other security satisfactory to the department in an amount determined by the department to be sufficient to guarantee performance of the terms and conditions of the lease. Such security shall be submitted prior to the beginning of operations or applying for a drilling permit. Such security shall not be less than ten thousand dollars. The lessee shall promptly advise the department of any changes in operation. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device, acceptable to the state, in an amount set by the department covering all of the lessee's state leases.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-350, filed 11/16/82.]

WAC 332-12-360 Plan of operations. An applicant or lessee shall submit to the department and obtain approval of

an acceptable plan of operations when applying for a preliminary investigation permit or prior to applying for a drilling permit required under Oil and Gas Conservation Act chapter 78.52 RCW. The purpose of the plan of operations is to provide detailed information for intended activities regarding exploration and reclamation. The plan of operations shall be reformulated to include development, production and additional reclamation or prior to making any material change in operations or when requested by the department.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-360, filed 3/13/86; 82-23-053 (Order 387), § 332-12-360, filed 11/16/82.]

WAC 332-12-370 Assignments. (1) Any lease may be assigned, mortgaged, sublet, or otherwise transferred as to a divided or undivided interest therein to any qualified applicant subject to the approval of the department. The lessee shall execute an assignment approved by the commissioner. A transfer of a separate zone or deposit under any lease or a part of a legal subdivision shall be considered an assignment and is subject to the approval of the department. All approved assignments shall take effect as of the first day of the lease month following the date of approval. A separate assignment fee is required for each separate lease in which an interest is assigned.

(2) Assignments of undivided interests in a lease or changes in controlling lease interest shall not create new leases or new obligations and shall be subject to the approval of the department. The approval of these assignments, a designation of a single agent or a power of attorney executed by all lessees shall be filed with the department and an acceptable agreement adequate to protect the state's interest including a designation of the lessee shall be executed and filed with the department.

(3) Any divided interest or partial assignment of a geographically distinct subdivision of a lease shall segregate the assigned and retained portions thereof and upon approval of such assignment by the commissioner, create a new lease as to the assigned lands. The rights and obligations of the lessees under the retained portion and the assigned portion of the original lease are separate and distinct but are identical as to terms and conditions. Execution of the assignment shall release or discharge the assignor from all obligations thereafter accruing with respect to the assigned lands. Such segregated leases shall continue in full force and effect for the primary term of the original lease.

(4) Owners of cost-free interests such as overriding royalties, where authorized by the department, shall not be considered lessees and shall be subject to the rights of the department against the lessee. All state assignment documents shall contain provisions which subject any cost-free interests created by an assignment to the authority of the commissioner to require the proper parties to suspend or modify such overriding royalties or payments out of production in such a manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable development and operations of such lease.

(5) The approval of any assignment shall not waive compliance with any terms and conditions of the original lease. The department may subject the assignment to special requirements or conditions to correct any noncompliance with the original lease. Upon approval of any assignment, the assignee or sublessee shall be bound by the terms of the original lease to the same extent as if such assignee or sublessee were the original lessee.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-370, filed 11/16/82.]

WAC 332-12-380 Surrender of leasehold. (1) Every lessee shall have the option of surrendering their lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all future liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued, physical damage to the premises embraced by the lease which have been occasioned by their operation, physical damages occasioned by right of way passage across other state lands, and the duty to plug and abandon and reclaim the lease premises.

(2) The lessee shall notify the department in writing requesting surrender of leasehold and the department shall acknowledge the receipt of such notice.

(3) If no operations have been conducted under the lease and no surface disturbances or damages have occurred on the land to be surrendered, the lease shall terminate sixty days after the date of the receipt by the department of the notice of surrender, unless the department authorizes an earlier date: Provided, That all payments due up to the time of termination are paid.

(4) If operations have been conducted and surface disturbance or damage has occurred on land proposed for surrender, the leasehold shall not terminate until the land has been reclaimed and placed in an acceptable condition and approved by the department, all wells have been properly plugged and abandoned, and all applicable conditions of chapter 78.52 RCW have been complied with. Termination of the lease shall become effective after approval by the department and all payments which may be due up to the time of termination are paid.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-380, filed 11/16/82.]

WAC 332-12-390 Due diligence. Oil and gas leases shall continue after their initial term as provided by RCW 79.14.020 and 79.14.050 if:

(1) The lessee has complied with the conditions of the lease and is actively exploring in which one string of tools is in operation on the lease premises, allowing not to exceed ninety days between the completion of one well and the start of the next; or

(2) The lessee shall be producing oil and/or gas in continuous paying quantities; or

(3) The lessee is proceeding and actively pursuing development in the opinion of the department to efficiently extract oil, gas or associated substances after discovery; or

(4) The lessee engages in drilling, deepening, repairing or redrilling any production well without a ninety-day cessation of such activities; or

(5) The lessee has constructed a well capable of producing oil, gas or associated substances in paying quantities which is shut-in by consent or order of the oil and gas conservation committee. Such lease extension shall continue for the duration of such consent or order.

[Statutory Authority: RCW 79.14.120. 86-07-027 (Order 472), § 332-12-390, filed 3/13/86; 82-23-053 (Order 387), § 332-12-390, filed 11/16/82.]

WAC 332-12-400 Termination of lease for default. The department may cancel the lease for noncompliance with the lease agreement, plan of operations, or applicable laws, rules, and regulations. The lessee shall be notified of such noncompliance and the necessary corrective measures by certified mail to the last known address of the lessee. If the lessee shall diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall occur. Otherwise termination or cancellation shall automatically become effective thirty days from the date of mailing the notice of default and shall be final. The lessee may make a written request for an extension of time outlining the circumstances such extension is warranted. The department may, upon receiving a written request prior to the end of the thirty-day period, grant an extension of time in which to comply with the terms and conditions of the lease. Termination shall not relieve the lessee of any obligation incurred under the lease.

Failure to pay required rental and/or royalty within the time prescribed shall automatically and without notice work a forfeiture of such leases and of all rights thereunder.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-400, filed 11/16/82.]

WAC 332-12-410 Condition of premises upon termination of lease. The lessee shall have thirty days from the termination date in which to remove all improvements, except buildings and structures, from the premises except as authorized by the state, leaving all existing development in good order and repair, and without unnecessarily hampering future development and operation of the lease premises. All such improvements remaining on the lease premises after thirty days, including the buildings and structures, shall become the property of the state: Provided, That the lessee may upon written request to the department be granted an extension of time where forces beyond the control of the lessee prevent removal of said improvements within thirty days. If the subsurface resource is exhausted, the lessee shall remove all improvements unless otherwise permitted by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-410, filed 11/16/82.]

WAC 332-12-420 Reclamation. The lessee shall restore the lease premises as required by state and federal law and the lease. The lessee shall submit final reclamation plans to the department for its approval prior to:

(1) Submission of such a plan to the oil and gas conservation committee; and

(2) Prior to notification to the department to plug and abandon any well; and

(3) Within ninety days prior to the end of the lease term.

All plans shall be subject to the approval of the department. All reclamation shall be completed within ninety days of the receipt of the final approved plan from the department. The department may, upon receiving a written request prior to the end of the ninety-day period, grant an extension of time for completion of reclamation.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-420, filed 11/16/82.]

WAC 332-12-430 Timber. No forest products owned by the department shall be cut, removed or destroyed unless approved in advance by the department. The lessee shall appropriately mark all forest products proposed to be cut. Unless the department elects to directly dispose of the forest products, the department will appraise the forest products and the lessee shall pay the appraised value of such forest products within thirty days of billing unless there is written extension of time by the department, and in any event, prior to their cutting.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-430, filed 11/16/82.]

WAC 332-12-440 Use of the premises. A lessee may use the lease premises as provided in the lease and the approved plan of operations, subject to existing rights and payments as otherwise provided. Such uses shall be those reasonably necessary for the exploration, operation, and production of oil and gas. All other uses shall require separate leases.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-440, filed 11/16/82.]

WAC 332-12-450 Prevention of waste and environmental protection. (1) The lessee shall conduct all operations in a manner to prevent waste and preserve property and resources. If the lessee fails to do so, the department may enter on the property to repair damages or prevent waste at the lessee's expense, in addition to other authorized actions.

(2) The lessee shall use all proper safeguards to prevent pollution of earth, air, and water. The lessee is responsible for all damage to public and private property caused by the lessee's operation and shall use all reasonable means to recapture escaped pollutants.

(3) The lessee shall explore for oil and gas with the minimum disturbance to the surface of the land. All drill holes shall be securely capped and/or plugged when not in use or abandoned. The lessee shall comply with all of the provisions of law governing surface and ground water.

(4) Topsoil on lands to disturbed shall be removed and stockpiled on the site. The lessee shall take all necessary steps to insure the preservation of the stockpiled topsoil, including establishment of a temporary vegetative cover to prevent erosion. Upon the final abandonment or completion of a drilling operation, the lessee shall reclaim the lease premises, including restoration of the surface to acceptable contours, redistribution of the topsoil, and reseeding the land with native grasses and native plants prescribed by the department in the approved plan of reclamation.

(5) Upon completion of production or exhaustion of an oil and/or gas resource, the lessee shall reclaim the land, and plug and abandon all wells.

(6) The department may, in the plan of operations, require interim measures to reclaim the lease area and protect all resources and property.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-450, filed 11/16/82.]

WAC 332-12-460 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on public lands or easement agreements shall conform to those standards approved and specified by the department.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-460, filed 11/16/82.]

WAC 332-12-470 Rights of way over state lands. Any lessee shall have a right of way over state lands not included in the lease area when authorized by law, when necessary, for the exploration, development and production of oil and gas, provided that a right of way application and a plat showing the location of such right of way shall be filed with the department. Rights of way, when authorized, will be granted to the lessee upon approval of the location by the department or other agency owning in fee the surface rights and payment of charges.

The department retains the right to utilize all rights of way and grant such other rights not inconsistent with the lessees use of such rights of way.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-470, filed 11/16/82.]

WAC 332-12-480 Field inspections and audits. Any person designated by the department shall have the right at any time to inspect and examine the lease premises and production facilities, and shall have the right during lessee business hours to examine such books, records, tax returns, and accounts of the lessee as are directly connected with the determination of royalties.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-480, filed 11/16/82.]

WAC 332-12-490 Reports. The rules and regulations promulgated under the Oil and Gas Conservation Act, chapter 78.52 RCW require standardized reports of well history or record and well log, production, and methods used in plugging and abandoning a well. These reports shall be made available to the department through the oil and gas conservation committee.

If a lessee discovers any subsurface resource of possible recoverable value, not covered in the oil and gas lease, the discovery shall be reported to the department within ten days of the discovery date.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-490, filed 11/16/82.]

WAC 332-12-500 Compliance with other laws. All development or production activities authorized by the lease shall be conducted in accordance with all applicable laws, rules and regulations. The lessee(s) shall, before commencing any operations on the leased lands, inform themselves of and then abide by the laws, rules and regulations affecting such operations. Compliance with state and federal laws, rules and regulations shall be the sole responsibility of the lessee and not the responsibility of the department.

The filing of a bond or other security as a lease requirement does not remove the obligation to file bonds required by other laws.

[Statutory Authority: RCW 79.14.120. 82-23-053 (Order 387), § 332-12-500, filed 11/16/82.]

Chapter 332-14 WAC
COAL LEASING RULES AND REGULATIONS

WAC

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WAC 332-14-010 Definitions. The following terms are applicable when used in the chapter and shall be defined as follows unless the context clearly requires otherwise:

(1) "Abandon" means the removal of all drilling and production equipment from the site and the restoration of the surface of the site to standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or a federally approved state program.

(2) "Auction" means competitive lease bidding by oral or sealed bids or a combination thereof.

(3) "Blending" means combining two or more grades of coal to achieve desired chemical or combustive properties.

(4) "Coal" means a black or brownish-black solid combustible substance which has been subjected to the natural process of coalification and which falls within the classification of coal by rank for lignite, subbituminous, bituminous or anthracite as defined in the American Society of Testing Material Standards.

(5) "Coal mining lease" means a lease not to exceed twenty years entitling the operator to develop, mine and market a known coal resource on state lands.

(6) "Coal option contract" means a one-year agreement entitling its holder to explore for coal on one section or 640 acres, whichever is larger and to remove up to 250 tons of coal for testing purposes.

(7) "Commingling" means the mixing of coal from the leased premises with coal from land other than the leased premises.

(8) "Department" means the department of natural resources.

(9) "Development" means any work which occurs after exploration and which furthers coal production.

(10) "Exploration" means investigation to determine presence, quantity and quality of coal resources by geologic, geophysical, geochemical or other means.

(11) "Exploration drill hole" means an exploratory drill hole constructed for the purpose of determining depth, thickness, quality and quantity of coal for the identification of underlying rock formations in which the coals occur and the determination of hydrological conditions.

(12) "Gross receipts from mining" means the fair market price per ton according to rank as prepared for market at the first point of sale or commercial use.

(13) "Grout" means a cementing agent which is used for plugging and sealing exploration drill holes.

(14) "Improvements, structures, and development work" means anything considered a fixture in law or the removal of overburden or the diversion of drainage or other work preparatory to removal of coal, placed upon or attached to state lands that has added value to the state's interest therein.

(15) "Logical mining unit" means contiguous lands or lands in reasonable proximity in which the recoverable coal reserves can be developed in an efficient, economical, and orderly manner as a unit with due regard to recoverable coal reserves. A logical mining unit may consist of one or more state leases under the control of a single lessee and may include intervening or adjacent lands in private or public ownership.

(16) "Mine" means any excavation made for production of coal for commercial sale or use.

(17) "Office of surface mining" means United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement or its successor.

(18) "Plug and abandon" means the placing of permanent plugs in a coal exploration drill-hole in such a way and at such intervals as are necessary to prevent future leakage of either fluid or gases from the drill hole to the surface or from one aquifer to another.

(19) "Production" means the work of extracting and preparing coal in commercial quantities for market or for consumption.

(20) "Reclamation" means rehabilitation of surface-mined areas to those required standards set forth by the Office of Surface Mining in 30 CFR, Part 947, "Surface Mining and Reclamation Operation Under a Federal Program for the State of Washington" or by a federally approved state program.

(21) "SEPA" means the State Environmental Policy Act, chapter 43.21C RCW.

(22) "State land" means land where all or part of the subsurface coal rights are owned by the state and are managed by the department.

(23) "Surface rights" means the rights to the use of the surface of the property not including subsurface rights.

(24) "Ton" means ton as defined by RCW 79.01.668.

(25) "Treatment" means improving the physical or chemical properties of coal.

(26) "Washing" means the separation of coal from undesired contaminants through use of a fluid medium.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-010, filed 4/29/85.]

WAC 332-14-020 Jurisdiction. These rules shall be applicable to all state lands which the department is authorized to lease for the purpose of prospecting, developing and extracting coal resources. These rules are promulgated pursuant to RCW 79.01.652 through 79.01.696.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-020, filed 4/29/85.]

WAC 332-14-030 Lands available for exploration and leasing—Authority to withhold. State lands subject to the management of the department shall be available for coal exploration in accordance with these regulations. The department is not required to offer any tract of land for coal exploration or coal mining unless it determines that the interests of the state would be served.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-030, filed 4/29/85.]

WAC 332-14-040 Applications. Applications for coal option contracts or coal mining leases shall be filed with the department in Olympia, Washington on forms provided by the department. An applicant may file more than one application and acquire more than one option contract or mining lease. Each application for a coal option contract or a coal mining lease shall be accompanied by a fee of one dollar per acre for the lands applied for but in no case less than fifty dollars. Fees shall be based upon acreages as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-040, filed 4/29/85.]

WAC 332-14-050 Refund of application fees. If an application for a coal option contract or a coal mining lease is rejected by the department, application fees may be refunded after deducting expenses incurred in investigating the character of the land.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-050, filed 4/29/85.]

WAC 332-14-060 Coal option contract and coal mining lease—Area—Term. One government surveyed section of land or up to 640 acres, whichever is the larger area, may be the subject of a coal option contract or a coal mining lease. The term of a coal option contract may not exceed one year. The term of a coal mining lease may not exceed twenty years. The acreage in a single application does not need to be contiguous. The total area of a coal option contract or a coal mining lease shall be limited to a logical mining unit as determined by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-060, filed 4/29/85.]

WAC 332-14-070 Coal option contract. The department may issue a coal option contract after investigation of the character of the state lands if the department deems it to be in the best interests of the state. An option contract may be conditioned or denied based upon the department's analysis of potential environmental impacts arising from applicant's

proposed exploration activities upon the premises. Applications will be considered received by the department upon the date of its arrival at the department's Olympia office. Applications for an option contract will not be considered during the term of an existing option contract. If more than one application for a coal option contract is received on the same day for the same premises, the successful applicant will be chosen by drawing lots. The coal option contract will be prepared by the department and mailed to the applicant for execution. Applicant shall have thirty days from the date of the mailing to sign and return the option contract to the department. Failure to return the signed contract within the specified period may result in the rejection of the application.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-070, filed 4/29/85.]

WAC 332-14-080 Converting coal option contract—Lease. To convert a coal option contract to a coal mining lease, the holder must submit an application for conversion on a form provided by the department. Applicant shall provide a detailed report of the results of its investigation and exploration together with its proposed plan of development for the extraction and production of coal and a proposed reclamation plan. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-080, filed 4/29/85.]

WAC 332-14-090 Coal mining leases—Environmental analysis. The department may condition or deny a coal mining lease based upon analysis of potential adverse environmental impacts. If a coal mining lease is awarded at public auction and is subsequently denied based upon potential adverse environmental impacts, all bid deposits will be refunded.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-090, filed 4/29/85.]

WAC 332-14-100 Procedure for award of coal mining lease at public auction. The department may offer coal mining leases for lands known to contain workable coal at public auction and award the lease to the highest bidder. Public bidding shall be by sealed bid followed by oral auction. Oral bidding will be confined to persons previously submitting sealed bids. Notice of the public auction shall be given at least thirty days prior to the auction in two newspapers of general circulation, one of which shall be in the county in which the premises are located. The notice shall specify the following:

(1) Place, date, and hour of the auction;

(2) Legal description of the premises;

(3) Royalty rates per RCW 79.01.668;

(4) The minimum acceptable bonus bid.

Sealed bids shall be submitted in accordance with the notice of auction and shall be accompanied by a certified check for one-fifth of the total bid, together with the entire first year's minimum annual per acre royalty as established in the proposed lease. Unsuccessful sealed bidders will have their deposits refunded. A successful oral bidder shall submit payment within ten days of an additional payment to equal one-fifth of its total bid.

The coal lease will be awarded to the highest bidder, provided that it is duly executed and returned to the department with the balance of the bid. If an executed coal lease and the required payments are not received by the department within thirty days of the date of the auction, the proposed lease may be awarded to the next highest bidder and any monies deposited by the defaulting bidder shall be forfeited to the department.

Award of a coal mining lease does not authorize any surface disturbing activities thereunder until SEPA requirements have been satisfied by the lessee.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-100, filed 4/29/85.]

WAC 332-14-110 Consolidation of leases. The holder of two or more coal mining leases may apply to the department for consolidation of leases in order to facilitate operations. If the department finds, after investigation and examination, that the proposed consolidation will be in the best interests of the state, approval will be issued.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-110, filed 4/29/85.]

WAC 332-14-120 Re-lease of coal leases. An existing lessee may make application to re-lease the premises for a like term from the department. If the department receives no other application and, after inspection and investigation regarding the development and improvement of the premises during original lease term, determines that it is in the best interests of the state to re-lease the premises, it shall fix the royalties for the ensuing term and issue a renewal lease for a term up to twenty years. If application is received from a new applicant, the state shall lease the premises at public auction.

If a person other than the original lessee shall be awarded the lease, they shall assume reclamation obligations and reimburse the original lessee for the value of the structures, improvements or development work which adds value to the premises as determined by the department. When bids are evaluated, the department shall extend a preference to the existing lessee to meet the terms of a higher competing offer.

An application for re-lease shall be filed with the department at least sixty days, but not more than one year prior to expiration of the lease. Unless a timely application for release is made, the department will not recognize any added premises values nor will reimbursement be required of a new lessee.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-120, filed 4/29/85.]

WAC 332-14-130 Lease-minimum annual royalty. The lessee shall pay the first year's minimum annual per acre royalty prior to execution of the lease. Each subsequent minimum per acre royalty payment shall be paid in advance each year. Minimum per acre royalty payment shall be credited against production royalties due for the same lease year.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-130, filed 4/29/85.]

WAC 332-14-140 Late royalty payments—Interest rate. Past due royalty payments shall bear interest at the highest rate permitted by RCW 19.52.020 per month. Costs of collection, including attorney's fees, shall be recoverable in addition to interest.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-140, filed 4/29/85.]

WAC 332-14-150 Procedure where surface rights encumbered. The holder of a coal option contract or a coal lessee shall have a right of action in the superior court of the county in which the premises are located to ascertain and determine the amount of damages, if any, which will accrue to the holder of surface rights by reason of the exercise of any of the exploratory, prospecting or mining rights conveyed by the department if agreement cannot be reached regarding damages. The term of any coal option contract or coal mining lease shall begin thirty days after the entry of the final judgment in such action, if the action has been pursued with due diligence.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-150, filed 4/29/85.]

WAC 332-14-160 Surety arrangements. The lessee shall file a corporate surety bond, cash bond, savings account assignment or other surety arrangement satisfactory to the department, in an amount determined by the department, in order to guarantee performance of the terms and conditions of an option contract or mining lease. Such surety arrangement shall be submitted for approval prior to commencing operations and shall be not less than one thousand dollars for an option contract and not less than ten thousand dollars for a mining lease. The department may, during the term of contract or lease, increase the amount of the surety arrangement for operational changes requiring increased levels of performance. The department may authorize a single surety arrangement for more than one state lease held by a person.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-160, filed 4/29/85.]

WAC 332-14-170 Plan of activities—Coal option contract. The applicant for a coal option contract shall submit a plan of activities which shall include but is not limited to the following:

(1) The type, location, and schedule of exploratory drilling and trenching activities;

(2) Location of other significant activities, including type and depth of drilling, trenching, and adit construction;

(3) Proposed roads;

(4) Reclamation, including method of plugging and sealing drill holes and adits;

(5) Proposed erosion control plans for roads, landings, drilling platforms, and trenches; and

(6) Proximity to surface water including proposed stream crossings.

If the holder of a coal option contract desires changes to the approved plan of activities, department approval is required.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-170, filed 4/29/85.]

WAC 332-14-180 Plan of development/operation/reclamation—Coal mining lease. The successful bidder for a coal mining lease pursuant to RCW 79.01.672 shall submit a plan for mining to include a fully detailed plan for orderly development and extraction of coal and reclamation of the premises. The plan will be used as a basis for SEPA analysis and evaluation of environmental impacts.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-180, filed 4/29/85.]

WAC 332-14-190 Reclamation—Federal permit required. All surface mining and reclamation activities shall be in accordance with the terms of a surface mine reclamation permit obtained from the U.S. Department of the Interior, Office of Surface Mining and Enforcement or a federally approved state permit.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-190, filed 4/29/85.]

WAC 332-14-200 Diligence and forfeiture. The holder of any coal mining lease shall expend at least fifty thousand dollars per year in exploration, mine development, mine operation, or reclamation activities on the premises, or on the logical mining unit of which the lands are a part unless a written waiver is issued by the department. Proof of such expenditure shall be submitted to the department on the anniversary date of the lease. By mutual agreement the diligence requirement may be met by an in lieu payment of said amount to the state. Failure to expend this amount of money may result in forfeiture of the coal lease. Applicants for coal leases shall identify the logical mining unit in which the lands applied for lie. In the event the department, after investigation and examination, finds that the proposed logical mining unit will be in the best interest of the state, such designation of a logical mining unit will be approved. In the event the department finds that the proposed logical mining unit will not be in the best interest of the state, the diligence requirements shall apply only to the lands included within the lease. The boundaries of a designated logical mining unit may be adjusted if a coal lease is renewed.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-200, filed 4/29/85.]

WAC 332-14-210 Assignments. Coal mining leases are assignable in accordance with RCW 79.01.292. Coal option contracts are not assignable.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-210, filed 4/29/85.]

WAC 332-14-220 Timber. No timber owned by the state shall be cut, removed or destroyed by a holder of a coal option contract or coal mining lease prior to approval by the department. Holder shall mark all timber proposed to be cut, removed or destroyed and the department shall appraise the timber. The department shall have the option of selling the timber or allowing the holder to cut, remove or destroy it upon payment of the appraised value.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-220, filed 4/29/85.]

WAC 332-14-230 Use of premises. On premises consumption and blending, commingling, washing or storage of coal may be authorized as a part of an approved plan of development and mining without payment of additional compensation to the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-230, filed 4/29/85.]

WAC 332-14-240 Right to audit business records. The department may, during normal business hours, examine the premises, improvements, operations or production facilities and may inspect books, records or federal income tax returns of the lessee in order to ascertain the production of coal and to determine compliance with the terms and conditions of the coal lease, approved development, mining or reclamation plans or these regulations.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-240, filed 4/29/85.]

WAC 332-14-250 Plugging and abandonment procedures for exploration drill holes. All exploration drill holes shall be properly plugged and abandoned by the holder of any coal option contract or coal mining lessee according to the following requirements:

(1) No drill holes shall be plugged and abandoned until the method and manner of plugging has been approved by the department. Drill holes not necessary for hydrological monitoring measurements shall be plugged and abandoned as soon as practical following drilling and probing. Hydrological monitoring holes shall be cased and capped while in use.

(2) All drill holes in which gas is present, or which exhibit artesian ground water flow, or which encounter ground water zones, shall be plugged with grout, cement or approved gel. These plugs shall extend a minimum of 100 feet above and below all ground water zones or to the top and bottom of the hole.

(3) Plugs below the water level of the drill hole must be made by a method which precludes dilution of the plugging material.

(4) All exploration drill holes must have surface plugs sufficient to effect a permanent seal. The top of the plug must be installed deeper than three feet below the original surface with a permanent identification monument in the soil above the plug.

(5) Unused drilling supplies and debris extraneous to drilling operations must be removed from the premises and the excavation must be backfilled to its approximate original land surface. Each drill site shall be graded to its approximate original contour and shall be left in a stable condition. Within thirty days after completion of all exploration activities, the lessee shall file a sworn statement on a form provided by the department setting forth in detail the methods used in sealing all drill holes and restoring the premises to a stable condition.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-250, filed 4/29/85.]

WAC 332-14-260 Access road construction and maintenance standards. Access roads authorized to be constructed and/or maintained on state lands or under right of way easement agreements shall conform to standards approved by the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-260, filed 4/29/85.]

WAC 332-14-270 Exploration reports—Confidentiality. A coal option contract holder or a coal mining lessee shall submit a semi-annual report to the department of all geophysical, geologic and qualitative coal data, analyses and maps which are gathered or prepared during exploration activities on the premises. This report shall include sampling information, geologic, geophysical and driller's logs and all analytical results. Sampling or drilling points shall be referenced by bearing and distances from identifiable land marks or by legal description. Such data, analyses or maps shall be confidential and not available for public inspection or copying for five years from the date of filing the report.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-270, filed 4/29/85.]

WAC 332-14-280 Compliance with other laws. All development or production activities authorized by the lease shall be conducted in accordance with applicable federal and state laws, rules and regulations. Compliance shall be the sole responsibility of the holder of any coal option contract or coal mining lessee and not the responsibility of the department.

[Statutory Authority: RCW 79.01.668. 85-10-040 (Order 443), § 332-14-280, filed 4/29/85.]

Chapter 332-16 WAC

MINERAL PROSPECTING LEASES AND MINING CONTRACTS

WAC

332-16-035	Prospecting leases and mining contracts—Rental rates, advance minimum royalty, prospecting work requirement, development work requirement and production royalty.
332-16-045	Recreational prospecting permit fee.
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332-16-225	Plugging and abandonment procedures for exploration drill holes.
332-16-235	Public auction of known deposits of valuable minerals or specified materials.
332-16-245	Public auction of placer gold mining contracts.
332-16-255	Recreational prospecting areas.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-16-010	General objectives of mineral resource management. [Order 3, § 332-16-010, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67; Mineral prospecting lease rules, adopted 6/1/59.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-020 Lands subject to mineral leasing law and chapter 332-16 WAC. [Order 3, § 332-16-020, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-030 Definitions. [Order 3, § 332-16-030, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-040 Applications. [Order 3, § 332-16-040, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-050 Applications—Simultaneous. [Order 3, § 332-16-050, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-060 Applications—Return of moneys. [Order 3, § 332-16-060, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-070 Area and term of leases and contracts. [Order 3, § 332-16-070, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-080 Leases and contracts in effect on June 10, 1965. [Order 3, § 332-16-080, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-090 Tide and shore land descriptions. [Order 3, § 332-16-090, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-100 Conversion of leases to contracts. [Order 3, § 332-16-100, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-110 Conversion of leases to contracts—Failure to convert. [Order 3, § 332-16-110, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-120 Forms. [Order 3, § 332-16-120, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-130 Time for return of executed leases and contracts. [Order 3, § 332-16-130, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-140 Cash or surety bond may be required. [Order 3, § 332-16-140, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-150 Timber. [Order 3, § 332-16-150, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-160 Notice of rental or minimum royalty. [Order 3, § 322-16-160, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-170 Right of entry. [Order 3, § 332-16-170, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-180 Damages to encumbered lands. [Order 3, § 332-16-180, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-190 Use of leased premises. [Order 3, § 332-16-190, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-200 Development work and improvements. [Order 3, § 332-16-200, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-210 Development work and improvements—Examples, acceptable. [Order 3, § 332-16-210, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-220 Development work and improvements—Examples, unacceptable. [Order 3, § 332-16-220, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-230 Development work and improvements—Reports. [Order 3, § 332-16-230, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-240 Development work and improvements—Additional time. [Order 3, § 332-16-240, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-250 Advance payment of minimum annual royalty. [Order 3, § 332-16-250, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-260 Royalties. [Order 3, § 332-16-260, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-270 Royalties—Computation. [Statutory Authority: RCW 79.01.618. 86-14-015 (Order 478), § 332-16-270, filed 6/23/86; Order 3, § 332-16-270, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-280 Royalties—Gross income. [Order 3, § 332-16-280, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 86-14-015 (Order 478), filed 6/23/86. Statutory Authority: RCW 79.01.618.

332-16-290 Royalties—Production. [Order 3, § 332-16-290, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-300 Royalties—Audit and verification. [Order 3, § 332-16-300, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-310 Maps, reports, and assays. [Order 3, § 332-16-310, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-320 Assignments. [Order 3, § 332-16-320, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-330 Consolidation of mining contracts. [Order 3, § 332-16-330, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

332-16-340 Administrative Procedure Act. [Order 3, § 332-16-340, filed 2/6/68; Resolution No. 72 (part), filed 1/19/67.] Repealed by 87-21-007 (Order 528), filed 10/9/87. Statutory Authority: RCW 79.01.618.

WAC 332-16-035 Prospecting leases and mining contracts—Rental rates, advance minimum royalty, prospecting work requirement, development work requirement and production royalty. The annual rental for years one through three of a mineral prospecting lease shall be $2.00 per acre, or $100.00, whichever is greater. The annual rental for years four through seven of the lease shall be $3.00 per acre, or $120.00, whichever is greater. The department may require that more than one year's annual rental be paid in advance prior to issuing the lease.

The annual prospecting work requirement for a mineral prospecting lease shall be $3.00 per acre.

The annual advance minimum royalty for years one through five of a mining contract shall be $5.00 per acre, or $250.00, whichever is greater. The annual advance minimum royalty for years six through ten of a mining contract shall be $10.00 per acre, or $500.00, whichever is greater. The annual advance minimum royalty for years eleven through twenty of

a mining contract shall be $20.00 per acre, or $1,000.00, whichever is greater.

The production royalty rate for mining contracts shall be 5% of the gross receipts. The rate to be incorporated into a mining contract issued upon conversion from a prospecting lease shall be the rate in effect on the date the prospecting lease was issued.

The annual development work requirement for a mining contract shall be $5.00 per acre.

All annual rental payments and annual advance minimum royalty payments must be made in advance, and lack of notice of payment due does not relieve the lessee of the obligation to make payments when due.

[Statutory Authority: RCW 79.01.618, 79.01.088 and 79.01.720. 87-21-005 (Order 523, Resolution No. 571), § 332-16-035, filed 10/9/87.]

WAC 332-16-045 Recreational prospecting permit fee. The fee for an annual permit for prospecting and collecting in designated recreational prospecting areas shall be $10.00.

[Statutory Authority: RCW 79.01.618, 79.01.088 and 79.01.720. 87-21-005 (Order 523, Resolution No. 571), § 332-16-045, filed 10/9/87.]

WAC 332-16-055 Application for prospecting lease. Applications for prospecting leases will be received during business hours in the office of the Department of Natural Resources, Olympia, Washington. Applications must be submitted on forms prescribed by the department and accompanied by the application fee.

All applications received by any means other than United States mail will be stamped with the date and time of receipt in the Olympia office. Applications received by United States mail will be considered received as of the close of business on that day. Applications will be accepted in the order received and priority of leasing will be established on this basis. The priority among applications filed simultaneously will be by drawing of lots.

If an application is rejected by the department, the application fee will be refunded and the applicant informed of the reason for rejection. If a portion of the lands applied for are encumbered or otherwise not available, such portion will be deleted from the application and the applicant notified of the change.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-055, filed 10/9/87.]

WAC 332-16-065 Conversion of a prospecting lease to a mining contract. An application to convert a prospecting lease to a mining contract must be submitted to the department at least one hundred eighty days prior to the expiration of the prospecting lease, together with the application fee.

The application shall include a plan of development which describes the development, operation and reclamation of the property, an environmental checklist and evidence that the prospecting work requirements of the lease have been met.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-065, filed 10/9/87.]

WAC 332-16-075 Prospecting lease not renewable. A prospecting lease not converted to a mining contract shall not be renewable. The holder of an expired prospecting lease, or the holder's agents, shall not be entitled to a new lease on the premises covered by the prior lease for one year from the date of the expired prospecting lease.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-075, filed 10/9/87.]

WAC 332-16-085 Failure to execute prospecting leases and mining contracts. When an applicant fails to sign a lease or contract and return the signed document with the rental or minimum royalty within thirty days, the application will be rejected and the application fee forfeited. Additional time for compliance with this section may be granted by the department if the applicant submits a written request for additional time to the department within the thirty day period.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-085, filed 10/9/87.]

WAC 332-16-095 Renewal of mining contract. The lessee may apply for renewal of a mining contract, except placer gold mining contracts issued pursuant to RCW 79.01.617, by submitting an application, and the application fee, within the ninety days prior to the expiration of the contract.

The terms of the renewal contract shall be the same as those contained in the previous contract unless valuable minerals or specified materials are not being produced. The terms of a renewal contract on a nonproducing lease shall be governed by the rules and rates in effect at the time the renewal contract is issued.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-095, filed 10/9/87.]

WAC 332-16-105 Performance security. The department may, at its option, require the lessee to file a cash bond, savings account assignment, approved corporate surety bond or other form of security satisfactory to the department in an amount sufficient to guarantee performance of the terms and conditions of the lease or contract. Such security, if required, shall be submitted prior to the commencement of prospecting or mining operations. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device, acceptable to the state, in an amount set by the department covering all of the lessee's state leases.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-105, filed 10/9/87.]

WAC 332-16-115 Timber. No forest products owned by the department shall be cut, removed or destroyed unless approved in advance by the department. The lessee shall appropriately mark all forest products proposed to be cut. Unless the department elects to directly dispose of the forest products, the department will appraise the forest products and the lessee shall pay the appraised value of such forest products within thirty days of billing unless there is a written extension of time by the department, and in any event, prior to their cutting.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-115, filed 10/9/87.]

WAC 332-16-125 Surface rights. Where the surface rights for the lands described in the prospecting lease or mining contract are held by a third party, the holder of the prospecting lease or mining contract shall make arrangements with the holder of the surface rights to protect the surface interests and submit to the department evidence of such arrangements, prior to the commencement of prospecting or mining activities, in one of the following forms:

(1) Waiver of damages executed by the holder(s) of the surface rights;

(2) Agreement in the form of a letter, contract or memorandum of understanding executed by both the mineral lessee and the holder(s) of the surface rights which provides for the settlement of all disputes and damages;

(3) A court order resolving the issues of access, damage claims and any other disputes.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-125, filed 10/9/87.]

WAC 332-16-135 Use of leased premises. The holder of a prospecting lease may use the leased premises as provided in the lease and the approved plan of operations, subject to existing rights and payments as otherwise provided. Such uses shall be those reasonably necessary for the exploration of the premises.

The holder of a prospecting lease may remove valuable minerals or specified materials of a value not exceeding $100 for the purpose of testing and assaying. The removal of valuable minerals or specified materials in excess of this amount requires prior written approval of the department, and may be subject to the payment of royalties.

The holder of a mining contract may use the leased premises as provided in the contract and the approved plan of operations, subject to existing rights and payments as otherwise provided. Such uses shall be those reasonably necessary for the exploration, development, operation and production of valuable minerals or specified materials.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-135, filed 10/9/87.]

WAC 332-16-145 Prospecting and development work. Prospecting leases shall require that the lessee perform the required annual prospecting work that contributes to the mineral evaluation of the premises. The lessee may make payment to the department in lieu of prospecting work for not more than three years during the term of the lease.

Mining contracts, except those issued for placer gold mining pursuant to RCW 79.01.617, shall require that the lessee perform the required annual development work that contributes to the mineral development of, and production from, the property. The lessee may make payment to the department in lieu of the performance of development work.

Prospecting work or development work actually accomplished during any one lease or contract year in excess of the lease or contract requirements may be applied toward the next succeeding year only, provided that the work is reported to the department at the end of the year in which it was performed, accompanied by a written request that the excess be applied to the next succeeding year.

All prospecting and development work reported is subject to evaluation and confirmation by the department. Work that does not directly contribute to the mineral evaluation or development of the property will not be accepted. The department shall have the right to inspect the work done and to examine all books and records pertaining to prospecting and development work reported. Prospecting and development work reports shall contain sufficient information, including adequate maps, plans, diagrams, locations, and costs to indicate the location, amount and type of work accomplished on or adjacent to the property and an explanation of how this work contributed to the mineral evaluation or development of the property.

Upon the written request of the lessee at the time the prospecting or development work report is submitted to the department, the report shall be considered confidential until a written release is obtained from the lessee or the termination, cancellation, surrender or expiration of the lease or contract.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-145, filed 10/9/87.]

WAC 332-16-155 Production royalty. Production royalties shall be payable as provided in the mining contract upon all valuable minerals, specified materials or any products whatever which are mined, saved, sold or removed from the leased premises.

The production royalty shall be calculated on the gross receipts, including all bonuses and allowances paid, earned, or received, at the point of sale of the first marketable valuable mineral(s) produced from the leased premises, whether or not such valuable mineral(s) are produced through chemical or mechanical processes, subject only to the deduction of transportation costs which transportation costs are part of the development plan approved by the department.

The department may set or calculate the production royalty in the case of specified materials and other products produced from the leased premises based on the volume of material removed from the leased premises.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-155, filed 10/9/87.]

WAC 332-16-165 Field inspections and audits. Any person designated by the department shall have the right at any time to inspect and examine the lease premises and the facilities thereon, and shall have the right during lessee's business hours to examine such books, records, tax returns, and accounts of the lessee as are directly connected with the determination of royalties.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-165, filed 10/9/87.]

WAC 332-16-175 Technical data. In the interest of further developing the mineral resources of the state of Washington, lessees shall submit to the department copies of all geological, geophysical, geochemical, engineering and metallurgical data relating to the property held under lease or contract within ninety days of the termination, cancellation,

surrender or expiration of the lease or contract. All of the following data, collected or prepared, are to be submitted:

(1) Geologic maps;

(2) Geochemical surveys, including sample location maps and results of tests for each sample;

(3) Geophysical surveys, including accurate station maps, measurements for each station and the results of data reduction, but not proprietary interpretations;

(4) Lithologic logs and geochemical analyses for exploratory drill holes;

(5) Map showing the location and orientation of exploratory drill holes;

(6) Results of metallurgical tests performed on samples from the premises;

(7) Results of engineering studies relating to the competence and stability;

(8) Surveyed level maps for underground workings.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-175, filed 10/9/87.]

WAC 332-16-185 Assignments. The assignment of any lease or contract may be made, subject to written approval by the department, upon submitting the request on the prescribed form to the department, together with the required assignment fee. The assignee shall be subject to and governed by the terms and conditions of the lease or contract. The approval of an assignment by the department shall not waive compliance with any terms and conditions of the lease or contract. No assignment of a lease or contract will be approved if any delinquencies exist with respect to any of the terms or provisions of the lease or contract.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-185, filed 10/9/87.]

WAC 332-16-195 Consolidation of mining contracts. The holder or holders of two or more mining contracts may apply to the department for the consolidation of their contracts under a common management to facilitate operation of larger-scale development.

If the department finds the consolidation to be in the best interests of the state, the consolidation will be approved.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-195, filed 10/9/87.]

WAC 332-16-205 Plan of operations. Prior to the commencement of prospecting activities which disturb the surface, the holder of a prospecting lease shall submit a plan of operations which shall include but is not limited to the following;

(1) The type, location, and schedule of exploratory drilling and trenching activities;

(2) Location of other significant activities, including type and depth of drilling, trenching, and underground development;

(3) Proposed roads;

(4) Proposed erosion control plans for roads, landings, drilling locations, and trenches; and

(5) Reclamation, including the method of plugging and sealing drill holes and underground openings.

Prior to the commencement of exploration, development or mining activities, the holder of a mining contract shall submit a plan of operations which includes items (1) through (5), above, and the implementation of the plan of development and reclamation submitted as part of the application for the mining contract.

If the lessee desires changes to the approved plan of operations, department approval is required.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-205, filed 10/9/87.]

WAC 332-16-215 Notice of intent to conduct prospecting or operations. The department must be notified at least fifteen days in advance of the commencement of work that includes activities approved as part of the lessee's plan of operations, which disturb the surface. If the surface rights on all or a portion of the leased premises are held by a third party, that party shall be provided a copy of the notification of intent to conduct prospecting or operations at the same time the department is notified.

Activities which are not part of the lessee's approved plan of operations cannot be included in the notice of intent.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-215, filed 10/9/87.]

WAC 332-16-225 Plugging and abandonment procedures for exploration drill holes. All exploration drill holes shall be properly plugged and abandoned by the lessee in accordance with procedures approved by the department.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-225, filed 10/9/87.]

WAC 332-16-235 Public auction of known deposits of valuable minerals or specified materials. The department may offer mining contracts at public auction on lands for which the department has information for the existence of commercially significant mineral deposits.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-235, filed 10/9/87.]

WAC 332-16-245 Public auction of placer gold mining contracts. The department may offer contracts for the mining of placer gold at public auction. Mining contracts for placer gold issued at public auction shall be for a term of 5 years and be nonrenewable. Payment shall be by bonus bid, if any, and an annual rental.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-245, filed 10/9/87.]

WAC 332-16-255 Recreational prospecting areas. The department may consider and evaluate written requests to designate specific areas as recreational prospecting areas. The criteria for the evaluation of such proposals shall include, but not be limited to, use conflicts, the presence of minerals in noncommercial quantities, public access and environmental sensitivity.

The department shall establish the amount of collecting, type of equipment and method(s) of collecting and/or prospecting to be allowed in each designated recreational prospecting area. Such rules will be based on the character of each

area, the mineral or minerals sought, and regulations imposed by other state agencies.

Following the determination by the department a site may be suitable for designation as a recreational prospecting area, the department shall hold a public hearing in the county where the lands are located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area.

After a recreational prospecting area has been designated by the department, the boundaries of the area will be marked.

A recreational prospecting permit issued by the department of natural resources is required by all persons 16 years of age and older for the use of designated recreational prospecting areas for prospecting and mineral collecting. The term of the permit shall be a calendar year.

[Statutory Authority: RCW 79.01.618. 87-21-007 (Order 528), § 332-16-255, filed 10/9/87.]

Chapter 332-17 WAC

GEOTHERMAL DRILLING RULES AND REGULATIONS

WAC

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WAC 332-17-010 Inspection. The department shall inspect all geothermal operations for the purpose of obtaining compliance with the rules, regulations, and orders promulgated by authority of the Geothermal Resources Act, chapter 43, Laws of 1974 ex. sess.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-010, filed 1/4/79.]

WAC 332-17-020 General rules. General rules shall be statewide in application unless otherwise specifically stated and shall be applicable to all lands within the jurisdiction of the state of Washington.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-020, filed 1/4/79.]

WAC 332-17-030 Supremacy of special rules and orders. Special rules and orders will be issued as required and shall prevail as against general rules if in conflict therewith.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-030, filed 1/4/79.]

WAC 332-17-100 Application for permit to commence drilling, redrilling or deepening. (1) The owner or operator of any well, or proposed well, before commencing the drilling, redrilling, or deepening of any wells shall file with the department a written application in triplicate of the intention to commence such drilling, redrilling or deepening accompanied by a fee of two hundred dollars as prescribed in RCW 79.76.070, except no fee is required for the drilling of core holes. The application shall be on forms as prescribed by the department and contain the following:

(a) The name of operator or company and address.

(b) Description of the lease or property including acres together with the name and address of the owner or owners of surface and mineral rights.

(c) The proposed location of the well or wells including a typical layout showing the position of mud tanks, reserve pits, cooling towers, pipe racks, etc.

(d) Existing and planned access and lateral roads.

(e) Location and source of water supply and road building material.

(f) Location of supporting facilities.

(g) Other areas of potential surface disturbances.

(h) The topographic features of the land, including drainage patterns.

(i) Methods for disposing of waste materials.

(j) The proposed drilling and casing plan.

(k) A surveyed plat showing the surface and expected bottom-hole locations and the distances from the nearest section or tract lines as shown on the official plat of survey or protracted surveys of each well or wells. The scale shall not be less than 1:24,000.

(l) A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to, the prevention or control of:

(i) Fires,

(ii) Soil erosion,

(iii) Pollution of surface and ground waters,

(iv) Damage to fish and wildlife or other natural resources,

(v) Air and noise pollution, and

(vi) Hazards to public health and safety during operational activities.

(m) Such other pertinent information or data which the department may require to support the application for the development of geothermal resources and the protection of the environment.

Provisions for monitoring may be required as deemed necessary by the department to ensure compliance with these regulations.

The collection of data concerning existing air and water quality, noise, seismic and land subsidence activities, and the ecological system of the area may be required as deemed necessary by the department.

(2) An application for the drilling of core holes shall contain the following:

(a) Name and address of the operator or company.

(b) Name and number, location of the core hole or holes to the nearest quarter-quarter section or lot.

(c) Proposed depth of each core hole, but not to exceed 750 feet into bedrock.

(d) A map of sufficient scale to show topography and drainage patterns, access roads, and the proposed core hole locations. A metes and bounds description of each core hole location shall be provided to the department within thirty days of completion of the core hole or the approved core hole program.

(3) Well names and numbers shall not be changed without first obtaining the written approval of the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-100, filed 1/4/79.]

WAC 332-17-110 Casing requirements. (1) All wells shall be cased to protect or minimize damage to the environment, surface and ground waters, geothermal resources and health and property. The department shall approve proposed well spacing and well casing programs or prescribe such modifications to the programs as the department determines necessary for proper development, giving consideration to such factors as:

(a) Topographic characteristics of the area.

(b) Hydrologic, geologic, or reservoir characteristics of the area.

(c) The number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use.

(d) Protection of correlative rights.

(e) Minimizing well interference.

(f) Unreasonable interference with multiple use of lands.

(g) Protection of the environment.

(2) Casing specifications shall be established on an individual well basis. The following specifications are general, but should be used as guidelines in submitting drilling permit applications.

(a) **Conductor pipe.** Annular space shall be cemented solid from the shoe to surface. An annular blowout preventer, or equivalent, remotely controlled hydraulically operated including a drilling spool with side outlets or equivalent may be required by the department. A kill line and blowdown line with appropriate fittings shall be connected to the drilling spool when same is required.

Conductor casing shall be set to a minimum depth of 15 meters (50 feet).

(b) **Surface casing.** This casing shall be set at a depth equivalent to, or in excess of, ten percent of the proposed depth of the well, provided, however, such depth shall not be less than 60 meters (200 feet) or extend less than 30 meters (100 feet) into bedrock. Surface casing holes shall be logged with an induction electric log, or equivalent, prior to running surface casing.

(c) **Intermediate casing.** This casing shall be required whenever anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncased fresh water aquifers, uncontrollable lost circulation zones, or other drilling hazards are present or occur, and whenever the surface casing has not been cemented through competent rock units. Intermediate casing strings shall be cemented solid if possible from the shoe to surface. If a liner is used as an intermediate string, the lap shall be tested by a fluid entry or pressure test to determine whether a seal between the liner top and the next casing string has been achieved. The liner overlap shall be a minimum of 30 meters (100 feet). The test shall be recorded in the driller's log and may be witnessed by a representative of the department.

(d) **Production casing.** This casing may be set above or through the producing or injection zone and cemented above the objective zones. Production casings shall be cemented to the surface or lapped into the intermediate string. Overlap shall not be less than 30 meters (100 feet) and shall be pressure tested. Lap or casing failure shall require repair, recementing, and successful retesting.

(e) **Cementing of casing.** Conductor and surface casing strings shall be cemented with a quantity of cement sufficient to fill the annular space from the shoe to surface. A high temperature resistant admix shall be used in cementing production casing unless waived by the department, and shall be cemented in a manner necessary to exclude, isolate, or segregate overlying formation fluids from the geothermal resources zone and to prevent the movement of fluids into possible fresh water zones.

A temperature or cement bond log may be required by the department if an unsatisfactory cementing job is indicated.

(f) **Pressure testing.** Prior to drilling out the casing shoe after cementing, all casing strings set to a depth of 152 meters (500 feet) or less except for conductor casing, shall be pressure tested to a minimum pressure of 35 bars (500 psi). Casing strings set to a depth of 152 meters (500 feet) or greater shall be pressure tested to a minimum pressure of 69 bars (1,000 psi) or 0.045 bars/meter (0.2 psi/ft) whichever is greater. Such test shall not exceed the rated working pressure of the casing or the blowout preventor stack assembly, whichever is lesser.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-110, filed 1/4/79.]

WAC 332-17-120 Blowout prevention. Blowout prevention and related control equipment shall be installed, tested immediately thereafter, and properly maintained ready for use until drilling operations are completed. Certain components, such as packing elements and ram rubbers, shall be of high temperature resistant material as necessary. All kill lines, blowdown lines, manifolds, and fittings shall be steel and have temperature derated minimum working pressure rating equivalent to the maximum anticipated wellhead surface pressure. Unless otherwise specified, blowout prevention equipment shall have manually operated gates and remotely controlled hydraulic actuating systems and accumulators of sufficient capacity to close all of the hydraulically operated equipment and have a minimum pressure of 69 bars (1,000 psi) remaining on the accumulator. Dual control stations shall be installed with a high pressure backup system. One control panel shall be located at the driller's station and one control panel shall be located on the ground at least 15 meters (50 feet) away from the wellhead or rotary table. Blowout prevention assemblies involving the use of air or

other gaseous fluid drilling systems may include, but are not limited to, a rotating head, a double ram blowout preventer or equivalent, a banjo-box or an approved substitute therefore and a blind ram blowout preventer or gate valve, respectively. Exceptions to the requirements of this paragraph will be considered by the department for areas of known surface stability and low subsurface formation pressure and temperatures.

(1) **Conductor casing.** One remotely controlled hydraulically operated expansion type preventer or acceptable alternative, including a drilling spool with side outlets or equivalent, may be required before drilling below conductor casing.

(2) **Surface, intermediate and production casing.** Prior to drilling below any of these strings, blowout prevention equipment shall include a minimum of:

(a) One expansion-type preventer and accumulator or a rotating head,

(b) A manual and remotely controlled hydraulically operated double ram blowout preventer or equivalent having a temperature derated minimum working pressure rating which exceeds the maximum anticipated surface pressure at the anticipated reservoir fluid temperature,

(c) A drilling spool with side outlets or equivalent,

(d) A fillup line,

(e) A kill line equipped with at least one valve, and

(f) A blowdown line equipped with at least two valves and securely anchored at all bends and at the end.

(3) **Testing and maintenance.** Ram-type blowout preventers and auxiliary equipment shall be tested to a minimum of 69 bars (1,000 psi) or to the working pressure of the casing or assembly, whichever is the lesser. Expansion-type blowout preventers shall be tested to 70 percent of the above pressure testing requirements.

(a) The blowout prevention equipment shall be pressure tested:

(i) When installed,

(ii) Prior to drilling out plugs and/or casing shoes,

(iii) Not less than once each week, alternating the control stations, and

(iv) Following repairs that require disconnecting a pressure seal in the assembly.

(b) During drilling operations, blowout prevention equipment shall be actuated to test proper functioning as follows:

(i) Once each trip for blind and pipe rams, but not less than once each day for pipe rams, and

(ii) At least once each week on the drill pipe for expansion-type preventers.

All flange bolts shall be inspected at least weekly and retightened as necessary during drilling operations. The auxiliary control systems shall be inspected daily to check the mechanical condition and effectiveness and to ensure personnel acquaintance with the method of operation. Blowout prevention and auxiliary control equipment shall be cleaned, inspected and repaired, if necessary, prior to installation to assure proper functioning. Blowout prevention controls shall be plainly labeled, and all crew members shall be instructed on the function and operation of such equipment. A blowout prevention drill shall be conducted weekly for each drilling crew. All blowout prevention tests and crew drills shall be recorded on the driller's log.

(4) **Related well control equipment.** A full opening drill string safety valve in the open position shall be maintained on the rig floor at all times while drilling operations are being conducted. A kelly cock shall be installed between the kelly and the swivel.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-120, filed 1/4/79.]

WAC 332-17-130 Drilling fluid. The properties, use and testing of drilling fluids and the conduct of related drilling procedures shall be such as are necessary to prevent the blowout of any well. Sufficient drilling fluid materials to ensure well control shall be maintained in the field area readily accessible for use at all times.

(1) **Drilling fluid control.** Before pulling drill pipe, the drilling fluid shall be properly conditioned or displaced. The hole shall be kept reasonably full at all times, however, in no event shall the annular mud level be deeper than 30 meters (100 feet) from the rotary table when coming out of the hole with drill pipe. Mud cooling techniques shall be utilized when necessary to maintain mud characteristics for proper well control and hole conditioning. The conditions contained herein shall not apply when drilling with air or aerated fluids.

(2) **Drilling fluid testing.** Mud testing and treatment consistent with good operating practice shall be performed daily or more frequently as conditions warrant. Mud testing equipment shall be maintained on the drilling rig at all times. The following drilling fluid system monitoring or recording devices shall be installed and operated continuously during drilling operations, with mud, occurring below the shoe of the conductor casing:

(a) High-low level mud pit indicator including a visual and audio-warning device, if applicable,

(b) Degassers if applicable, and desilters and desanders if required for solids control,

(c) A mechanical, electrical, or manual surface drilling fluid temperature monitoring device. The temperature of the drilling fluid going into and coming out of the hole shall be monitored, read, and recorded on the driller's or mud log for a minimum of every 9 meters (30 feet) of hole drilled below the conductor casing, and

(d) A hydrogen sulfide indicator and alarm shall be installed in areas suspected or known to contain hydrogen sulfide gas which may reach levels considered to be dangerous to the health and safety of personnel in the area.

No exceptions to these requirements will be allowed without the specific prior permission of the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-130, filed 1/4/79.]

WAC 332-17-140 Well logging. All wells shall be logged with an induction electric log or equivalent from total depth to the shoe of the conductor casing. The department may grant an exception to this requirement when well conditions make it impractical or impossible to meet the above requirements.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-140, filed 1/4/79.]

WAC 332-17-150 Removal of casing. No person shall remove casing or any portion thereof from any well without first obtaining prior written approval from the department. In the request to remove casing, the applicant must describe the condition of the well, the proposed casing to be removed, all casing in the hole, location of plugs, and perforations.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-150, filed 1/4/79.]

WAC 332-17-160 Drilling bond. The owner or operator who proposes to drill, redrill, or deepen a well for geothermal resources shall file with the department a good and sufficient bond in the sum of fifteen thousand dollars for each well or a fifty thousand dollar blanket bond for one or more wells being drilled, redrilled, or deepened at any time. The bond shall be filed with the department at the time of filing the application to drill, redrill, or deepen a well or wells. Approval of the bond by the department must be obtained prior to the commencement of drilling, redrilling, or deepening. The bond shall be made payable to the state of Washington, conditioned for performance of the duty to properly:

(1) Drill all geothermal wells,

(2) Operate and maintain producing wells, and

(3) Plug each dry or abandoned well in accordance with applicable rules and regulations of the department.

The bond shall be executed by such owner or operator as principal and by a surety company authorized to do business in the state of Washington as surety, conditioned upon the faithful compliance by the principal with the laws, rules, regulations, and orders under the Geothermal Resources Act and shall secure the state against all losses, charges, and expenses incurred by the state in obtaining such compliance by the principal of the bond.

A single core-hole bond shall be in the sum of five thousand dollars and a blanket core-hole bond shall be in the sum of twenty-five thousand dollars.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-160, filed 1/4/79.]

WAC 332-17-165 Cancellation of bond. Termination and/or cancellation of any bond will not be permitted until the well, or wells, for which the bond has been issued have been properly abandoned or another valid bond for such well or wells has been submitted therefore and approved by the department. A bond may be canceled upon transfer of the jurisdiction of the well to and acceptance of jurisdiction by the department of ecology. No bond shall be released until the department in writing shall have authorized such release.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-165, filed 1/4/79.]

WAC 332-17-200 Transfer of jurisdiction to department of ecology. Transfer of jurisdiction over a well to the department of ecology may be permitted provided it has been established that it is not technologically practical to produce electricity commercially or usable minerals cannot be derived from the well and provided, further, the department of ecology has by affidavit indicated its willingness to assume such responsibility. Transfer of such jurisdiction will relieve the owner or operator of further compliance with the provisions of the Geothermal Resources Act and these rules and regulations, however, the owner or operator shall be subject to applicable laws and regulations relating to wells drilled for appropriation and use of ground waters.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-200, filed 1/4/79.]

WAC 332-17-300 Proper completion and abandonment. Completion and abandonment of any well or wells shall be conditioned upon implementation of adequate procedures to protect the environmental and esthetic qualities of the drill site, access roads, and other areas that were disturbed as a result of drilling or related operations.

(1) **Completion.** For the purposes of the Geothermal Resources Act and these rules and regulations, a well will be considered as properly completed when drilling has been completed and a production head has been installed on the well pending actual utilization in the production of geothermal resources as defined in this act. Suspension of a well after completion and prior to actual production shall not exceed six months duration unless approved in writing by the department.

(2) **Abandonment.** A well shall be properly abandoned for the purposes of this act when:

(a) Drilling, redrilling, or deepening operations have ceased; or geothermal resources cannot be produced from the well; or the well no longer commercially produces geothermal resources; and proper cement plugs have been placed by the owner or operator and approved by the department; and

(b) The owner or operator has taken all appropriate steps to protect surface and ground waters and prevent the escape of deleterious substances to the surface.

(3) **Site restoration.** Cellars, pads, structures, and other facilities shall be removed. All drilling supplies and scrap shall be removed. The surface shall be graded and revegetated as appropriate to the immediate area or as otherwise specified by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-300, filed 1/4/79.]

WAC 332-17-310 Abandonment procedures. No well shall be plugged and abandoned until the manner and method of plugging have been approved or prescribed by the department. The owner or operator shall give notice to the department of the intention to abandon the well and the date and time abandonment procedures will commence.

(1) The notice shall specify the condition of the well and the proposed method of abandonment. The owner or operator shall furnish such additional information concerning the well condition and abandonment procedures as may be required by the department.

(2) The owner or operator shall within twenty-four hours after giving notice of intent to abandon provide the department with a written notice setting forth the proposed abandonment procedures and the condition of the well.

(3) All wells to be abandoned shall have cement plugs placed in the well as prescribed herein. Such cement shall consist of a high temperature resistant admix unless waived by the department in accordance with the particular circumstances existing in the well.

(a) **Cased holes.**

(i) A cement plug shall be placed across all perforations in the casing, extending 30 meters (100 feet) below and 30 meters (100 feet) above the perforated interval.

(ii) A cement plug shall be placed across all casing stubs, laps, and liner tops, extending a minimum of 15 meters (50 feet) below and 15 meters (50 feet) above such stub, lap, or liner top.

(iii) Casing shoes shall be straddled by a cement plug with a minimum of 30 meters (100 feet) below and 30 meters (100 feet) above and below the shoe.

(iv) All annular space open to the surface shall be filled with cement to the surface.

(v) All casing exposed to the surface shall be cut off 6 feet below ground surface unless otherwise designated by the department.

(vi) A surface plug shall be placed in the casing extending for a minimum of 10 meters (30 feet) below the approved cut off top of the casing. The casing shall be capped by welding a steel plate on the casing stub.

(b) **Open holes.** Cement plugs shall be placed across fresh water zones, geothermal resource zones, to isolate formations, and to prevent interformational migration or contamination of fluids. Such plugs shall extend a minimum of 30 meters (100 feet) above and below all such zones.

(4) All intervals between plugs shall be filled with drilling mud.

(5) Within thirty days after plugging a well the owner or operator shall file an affidavit with the department setting forth in detail the method used in plugging the well and restoring the site. The affidavit shall be made on a form supplied by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-310, filed 1/4/79.]

WAC 332-17-320 Suspension. Drilling equipment shall not be removed from any well where drilling operations have been suspended before adequate measures have been taken to close the well and protect the surface and subsurface resources including fresh water aquifers. A suspended well shall be mudded and cemented as set forth in WAC 332-17-310 of these rules and regulations or as otherwise approved by the department except that WAC 332-17-310 (3)(a)(iv) - (vi) will not be required.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-320, filed 1/4/79.]

WAC 332-17-340 Notice of change of ownership. Every person who acquires the right of ownership or right of operation of a geothermal well or wells shall within ten days notify the department in writing of the newly acquired ownership or right of operation and provide a bond equivalent to the bond supplied by the prior owner or operator. Each notice shall contain the following:

(1) Name, address, and signature of the person from whom the well or land was acquired;

(2) Name and location of such well or wells;

(3) Date of acquisition; and

(4) Description of the land upon which such well or wells is situated.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-340, filed 1/4/79.]

WAC 332-17-400 Records. The owner or operator of any well or wells shall keep or caused to be kept careful and accurate logs, core records, and history of the drilling of the well. The logs and tour reports shall be kept in the local office of the owner or operator and shall be subject during business hours to inspection by the department except during casing or abandonment operations when appropriate logs will be available at the well site.

Records that shall be filed with the department as set forth in RCW 79.76.210 are:

(1) The drilling log and core record showing the lithologic characteristics and depths of formations encountered, and the depths and temperatures of water-bearing and steam-bearing strata, and the temperature, chemical compositions, and other chemical and physical characteristics of fluids encountered. Core records shall show the depth, lithologic character, and the fluid content of cores obtained.

(2) The well history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, recompletion, and abandonment of the well.

(3) The well summary report shall accompany the drilling logs and well history report. It shall show the spud date, completion date, abandonment date, casing summary, fresh water zones, producing zones, total depth, well location, tops of formations penetrated and bottom hole temperature.

(4) Production records shall be submitted monthly to the department on or before the 10th of each month for the preceding month on a form approved by the department.

(5) Electric logs, directional logs, physical or chemical logs, tests, water analysis, surveys including temperature surveys, and such other logs or surveys as may be run.

(6) A set of ditch samples if taken at not less than 30 meters (100 feet) intervals.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-400, filed 1/4/79.]

WAC 332-17-410 Vertical and directional wells. Deviation surveys shall be taken on all wells during the normal course of drilling at intervals not to exceed 152 meters (500 feet). The department may require a directional survey giving both inclination and azimuth or a dipmeter to be obtained on all wells. In calculating all surveys, a correction from true north to Lambert-Grid north shall be made after making the magnetic to true north correction. All surveys shall be filed with department as set forth in WAC 332-17-400. Wells are considered to be directional if inclination from vertical exceeds an average of five degrees. In directional wells directional surveys shall be obtained at intervals not to exceed 30 meters (100 feet) prior to, or upon setting any casing string or lines (except conductor casing) and total depth.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-410, filed 1/4/79.]

WAC 332-17-420 Department to witness tests. Sufficient notice shall be given in advance to the department of the date and time when the owner or operator expects to run casing, test casing, conduct a drill stem test, or log a well in order

that the department may have a representative on the drill site as a witness.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-420, filed 1/4/79.]

WAC 332-17-430 Well designation. The owner or operator shall place in a conspicuous location near the well site a sign setting forth the name of the owner or operator, lease name, well number, permit number, and the quarter-quarter section or lot, township, and range of the well location. Such well designation shall maintained until the well has been abandoned.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-430, filed 1/4/79.]

WAC 332-17-440 Well spacing. The department will approve proposed well spacing programs or prescribe such modifications to the programs as it determines necessary for proper development, giving consideration to such factors as:

(1) Topography of the area;

(2) Geologic conditions of the reservoir;

(3) Minimum number of wells required for adequate development; and

(4) Protection of environment.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-440, filed 1/4/79.]

WAC 332-17-450 Right of entry. Department representatives shall have the right to enter upon any lands and examine such records related to the drilling, redrilling, deepening, or the completion, or the abandonment of, or production from any geothermal well to ensure compliance with the Geothermal Resources Act and these rules. Any owner or operator who denies the right of entry of a department representative or willfully hinders or delays the enforcement of the provisions of the act and these rules or who otherwise violates, fails, neglects, or refuses to comply with any of the provisions of the act or these rules will be subject to the penalties as set forth in RCW 79.76.260.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-450, filed 1/4/79.]

WAC 332-17-460 Pits or sumps. The owner or operator shall provide pits and/or sumps of adequate capacity and design to retain all fluids and materials necessary to the drilling, production, and related operations on the well. No contents of pits and/or sumps shall be allowed to:

(1) Contaminate streams, artificial canals, waterways, ground waters, lakes, or rivers;

(2) Adversely affect the environment, persons, plants, and wildlife; and

(3) Adversely affect esthetic values of the property or adjacent properties.

When pits and/or sumps are no longer needed, they shall be pumped out and the contents disposed of in approved disposal sites unless otherwise approved by the department.

[Statutory Authority: RCW 79.76.050(2). 79-02-001 (Order), § 332-17-460, filed 1/4/79.]

Chapter 332-18 WAC
SURFACE MINE RECLAMATION

WAC

332-18-010 Definitions.
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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-18-015 Compliance with local regulations. [Order 94, § 332-18-015, filed 4/6/71.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-020 Provisional permit. [Order 86, § 332-18-020, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-030 Combined operating permits. [Order 86, § 332-18-030, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-040 Multiple operations at one site. [Order 86, § 332-18-040, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-060 Confidential material. [Order 86, § 332-18-060, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-070 Time extensions. [Order 86, § 332-18-070, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-080 Preplanning. [Order 86, § 332-18-080, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-090 Revegetation. [Order 86, § 332-18-090, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-100 Water control. [Order 86, § 332-18-100, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

332-18-110 Water impoundment. [Order 86, § 332-18-110, filed 10/27/70, effective 11/28/70.] Repealed by 94-14-051, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250.

WAC 332-18-010 Definitions. The following definitions shall apply to these rules:

(1) "The act" means the Washington Surface Mining Act, chapter 78.44 RCW.

(2) "Buffers" are synonymous with screening as used in the act.

(3) "Completed application" means receipt and approval by the department of all information required in the act, including:

(a) A reclamation plan;

(b) Performance security;

(c) The application fee; and

(d) Evidence that SEPA review has been completed.

(4) "Completed reclamation" as referred to in the act means final reclamation that has been approved by the department. Prior to approval, the department shall assure that the vegetative cover, soil stability, and water conditions of the reclaimed segment are appropriate to the approved subsequent use of the site. After July 1, 1995, final approval shall be given in writing by the department.

(5) "Enforcement" as used in these rules and the act means the regulatory authority to identify and document the status of compliance of a surface mine, and authority to impose sanctions under the act and these rules.

(6) "Land use plan" and "land use designation" refer to approval of the site for mining and for the use after mining by the appropriate city, town, or county government.

(7) "Simple and accurate legal description" in the act means the Government Land Office grid location (quarter section(s), section, Township, Range, and Meridian). Alternatively, the applicant or reclamation permit holder may provide a certified land survey. Metes and bounds descriptions are generally unacceptable for permits issued or revised after July 1, 1994.

Other terms used in these rules are defined in the act.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-010, filed 6/30/94, effective 8/2/94; Order 86, § 332-18-010, filed 10/27/70, effective 11/28/70.]

WAC 332-18-01001 Delegation of enforcement to counties. (1) The department may delegate enforcement of surface mine reclamation to a county: Provided, That the county agrees to:

(a) Enforce all provisions of the act, these rules, and the approved reclamation plan;

(b) Continuously employ enough qualified mine regulatory personnel to achieve the purposes of the act and these rules;

(c) Assume full responsibility for all aspects of enforcement that are described in the contract between the department and the county;

(d) Provide the department with copies of all documents related to enforcement; and

(e) Comply with all related written policies of the department.

(2) Such delegation shall be through a contract with the county.

(3) The department shall audit the performance of the county to assure that there is compliance with the enforcement provisions of the act and these rules. If the department determines that the county has failed to adequately and fairly enforce the act and these rules to the department's satisfaction, then the county shall be given written notice describing the deficiencies. If the county is unable to correct the deficiencies within the following six months, then the department may revoke the delegation.

(4) The department shall maintain sole authority to approve reclamation plans, to issue reclamation permits, to issue declarations of abandonment, to cancel reclamation permits, and to develop reclamation regulations and standards.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-01001, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01002 Land use approval and regulation of operations. (1) For reclamation permits issued after July 1, 1994, approval of mining and of the subsequent use of the mine site shall be verified with a Form SM-6; except that such approval may not be required for mines on state or federal lands. The Form SM-6 must be signed by a responsible official from the appropriate city, town, or county.

(2) The department will not accept a Form SM-6 that obligates the department to regulate any "operation" except as necessary to assure timely reclamation.

(3) Conditions on any state surface mine operating permit issued prior to July 1, 1993, that cause the department to regulate "operations," that are not directly related to reclamation are invalid, except those conditions that were properly adopted pursuant to the department's SEPA substantive authority.

(4) After July 1, 1995, the department will attempt to notify the appropriate local government or state agency of surface mines affected by subsection (3) of this section.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-01002, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01003 Issuing reclamation permits. (1) After July 1, 1994, the department shall not issue a reclamation permit until the applicant has:

(a) Met all requirements of these rules and the act;

(b) Provided documentation of SEPA review sufficient for the department to determine that the impacts of the proposal can be adequately mitigated;

(c) Received the following approvals if required by state or local governments:

(i) Approvals under local zoning and land use regulations;

(ii) A shoreline permit;

(iii) A hydraulic project approval; and/or

(iv) All solid waste permits.

(2) When an applicant has met all provisions of subsection (1) of this section, these rules, and the act, the department shall issue a reclamation permit within thirty days. Appeals of any existing permits listed in subsection (1) of this section shall not stay the timely issuance of a reclamation permit.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-01003, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01004 Denial of an application for a reclamation permit. The department may refuse to issue a reclamation permit or revised reclamation permit only if the applicant:

(1) Fails to provide a complete application;

(2) Provides a proposal that the department determines should be denied pursuant to RCW 43.21C.060 and WAC 332-41-665; or

(3) Is not in compliance with an order or notice of the department.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-01004, filed 6/30/94, effective 8/2/94.]

WAC 332-18-01005 Annual permit fees for county governments. For reclamation permits held by a county, the county shall pay annual fees for each permit as follows:

(1) For each surface mine having a permitted area greater than seven acres, the counties shall pay six hundred fifty dollars annually, whether or not the surface mine is active.

(2) For mines that are less than or equal to seven acres and are used exclusively for public works projects and from which minerals will be extracted during the next calendar year, the county shall also pay:

(a) Six hundred fifty dollars for one such mine;

(b) One thousand dollars for two such mines; and

(c) No additional annual fee for all other mines meeting the criteria of this subsection.

(3) Counties shall pay permit application fees but no annual fees for mines that are less than seven acres and from which minerals will not be extracted during the next calendar year.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-01005, filed 6/30/94, effective 8/2/94.]

WAC 332-18-050 Inspections and cancellations of permits. The department shall have the right to inspect any property at any time as it determines is necessary to ensure there is compliance with the act, these rules, and the reclamation plan. Inspections shall be limited to those lands and the permit holder's records that pertain to surface mine reclamation. All deficiencies shall be brought to the attention of the miner or permit holder.

The department, at its option, may refuse to issue another permit to a miner or permit holder who is in noncompliance with an order of the department until all deficiencies are corrected to the satisfaction of the department.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-050, filed 6/30/94, effective 8/2/94; Order 86, § 332-18-050, filed 10/27/70, effective 11/28/70.]

WAC 332-18-05001 Orders and notices of the department. (1) The department may issue orders and notices as described in the act and these rules. Before issuing the initial order related to a specific violation, the department shall attempt to hold a conference with the miner or permit holder. The purpose of the conference is to determine if a violation has occurred and, if so, to develop a plan to correct the violation and mitigate its impacts insofar as practicable.

(2) Orders and notices of the department shall set forth:

(a) The nature and extent, and if known, the time of the violation(s);

(b) The rights of the miner or permit holder to appeal; and

(c) Applicable time frames for corrective action and appeal.

(3) Orders and notices of the department shall be in writing and delivered to the miner or permit holder by mail or personal service.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05001, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05002 Time extensions and additional performance security. The department may grant an extension of the applicable compliance timetables if failure to comply with the permit, rules, or the act resulted from circumstances clearly beyond the control of the miner or permit holder. The extension may be granted for up to eighteen months. However, the extension may be revoked if the miner or permit holder is not, in the opinion of the department, making every reasonable effort to comply.

Additional performance security in a form acceptable to the department may be required if it is determined to be necessary to assure that the deficiencies are rectified.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05002, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05003 Civil penalties—Procedures. (1) If a miner or permit holder fails to comply with the act, these rules, the permit, the reclamation plan, or any order or emergency order of the department, the miner or permit holder may be subject to a civil penalty for each violation based upon the schedule of fines set forth in WAC 332-18-05004 and calculated according to WAC 332-18-05005.

(2) The penalty shall be imposed by a notice of penalties delivered by certified mail with return receipt requested or by personal service.

(3) The notice of penalties shall explain the base penalty and penalty calculation as outlined in WAC 332-18-05004 and 332-18-05005.

(4) If the penalty and interest are not paid to the department after these are due and payable, the attorney general, at the request of the department, may bring an action in accordance with RCW 78.44.250.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05003, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05004 Fines, base penalties schedule. In setting the amount of a civil penalty imposed under RCW 78.44.087, the department shall consider the following base penalty schedule:

(1) Category I. Fines of two hundred fifty dollars may be levied for each violation of the following:

(a) Failure to post the reclamation plan at the mine site if directed to do so by the department;

(b) Failure to install or maintain monuments;

(c) Failure to provide a new reclamation plan upon request;

(d) Failure to provide requisite solid waste permits to the department;

(e) Failure to route or provide drainage so that reclaimed surfaces are protected from erosion or mass wasting; and/or

(f) Excavation within the reclamation setbacks.

(2) Category II. Fines of five hundred dollars may be levied for each violation of the following:

(a) Failure to pay annual fees;

(b) Unauthorized sale of, or backfilling with, topsoil needed for reclamation;

(c) Failure to revegetate a segment within the first appropriate growing season;

(d) Surface mining outside the reclamation permit area;

(e) Failure to protect adjacent properties from erosion or slope failure;

(f) Failure to compact fill used for reclamation if such failure results in slope failure; and/or

(g) Any violation of an order of the department.

(3) Category III. Fines of one thousand dollars per day to a maximum of ten thousand dollars per day may be levied seven days per week for each violation of the following:

(a) Surface mining without a reclamation permit;

(b) Failure to provide performance security upon request;

(c) Failure to remove noxious, combustible, or compactible materials from the mine site;

(d) Failure to complete reclamation of a segment within two years after cessation of operations;

(e) Failure to comply with an emergency order of the department; and/or

(f) Failure to comply when more than one order of the department has been issued for the same violation.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05004, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05005 Calculation of penalty. Fines shall be calculated using the following steps:

(1) The base penalty shall be the minimum fine in each category as set forth in WAC 332-18-05004, unless mitigated pursuant to WAC 332-18-05007.

(2) The department may adjust the fine by multiplying the Category II and III base penalties by factors specific to the incident, miner or permit holder, and/or site. The following factors shall not be imposed unless the department explains in writing how each factor was determined:

(a) Severity: The department shall adjust the penalty to reflect the extent or magnitude and difficulty of repairing the damage to lands, waters, and neighboring properties. This factor shall increase the base penalty by not more than 5.0 times the base penalty.

(b) Previous violation(s): The department shall consider whether the violator has had previous significant violations of the act, rules, permit, or reclamation plan as documented by an enforcement action. This factor shall increase the base penalty by not more than 3.0 times the base penalty.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05005, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05006 Penalties due. (1) Penalties imposed under this section shall become due and payable thirty days after receipt of a notice imposing the fine unless the miner or permit holder applies for mitigation or files an appeal.

(2) Thirty days after the miner or permit holder is notified that administrative review of penalties is complete, the penalty shall become due and payable.

(3) Thirty days after a penalty becomes due and payable, interest shall accrue at the maximum rate allowed by RCW 19.52.020 until the penalty is paid to the department.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05006, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05007 Civil penalties—Mitigation, appeals. (1) Within fifteen days after receiving a notice of penalties, the miner or permit holder may request the department to mitigate the penalty. The application must be in writing and delivered to the department at the following address:

Manager
Division of Geology and Earth Resources
Department of Natural Resources
P.O. Box 47007
Olympia, WA 98504-7007

(2) Upon receipt of the application for mitigation, the penalty may be reduced, dismissed, or left unaltered at the discretion of the department.

(3) The department shall give the miner or permit holder written notice of its decision within thirty days.

(4) If the department refuses to dismiss the penalty, a miner or permit holder may appeal the penalty to the pollution control hearings board as follows:

(a) Any such appeal must be received by the pollution control hearings board within thirty days after the miner or permit holder receives the written notice in response to the application for mitigation of the penalty;

(b) A copy of the appeal must be delivered to the department at the address given in subsection (1) of this section within the same thirty-day period; and

(c) The miner or permit holder must comply with the rules for appeals to the pollution control hearings board set out in chapter 371-08 WAC.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05007, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05008 Enforcement of penalties. If the penalty and/or applicable interest are not paid to the department within thirty days after these become due and payable, the attorney general, upon the request of the department, may bring an action in superior court to recover the penalty or interest. In all such actions, the procedures and rules of evidence shall be the same as in an ordinary civil action except as otherwise provided in the act.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05008, filed 6/30/94, effective 8/2/94.]

WAC 332-18-05009 Adjudicative proceedings—Standing. A person has standing to obtain review of a department action concerning surface mining under chapter 78.44 RCW only if that person is aggrieved by the department's action. A person is aggrieved only when all three of the following conditions are present:

(1) The department's action has prejudiced or is likely to prejudice that person;

(2) That person's asserted interests are among those that the department was required to consider when it took the action being challenged; and

(3) A decision in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the department's action.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-05009, filed 6/30/94, effective 8/2/94.]

WAC 332-18-120 Performance security. (1) The performance security required by RCW 78.44.087 may be in the form of a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW.

(2) After July 1, 1995, performance bonds required by RCW 78.44.087 shall be substantially in the following form, unless, in considering any reclamation permit, the department determines that a different form is desirable or required.

SURFACE MINING RECLAMATION BOND

Permit No. . . . .

KNOW ALL PEOPLE BY THESE PRESENTS, That we,. . . . . , as Principal, and. . . . . , a corporation organized and existing under the laws of the State of. . . . . [,] and authorized to transact business in the State of Washington, as Surety, are held and firmly bound unto the State of Washington, acting through the Department of Natural Resources, in the sum of. . . . . ($. . . . .) U.S. DOLLARS, for the payment of which sum we bind ourselves, and each of our legal representatives, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, The Principal has received from the Department of Natural Resources, State of Washington, an operating or reclamation permit to conduct surface mining on the Premises whose legal description is in the portion of:

Sec(s)..., ..., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)..., ..., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)..., ..., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
Sec(s)..., ..., ..., ..., T, ..., N, R... (E)(W) W.M. (circle one):
. . . . . (counties)

. . . . . .
. . . . . .
. . . . . .
. . . . . .

NOW, THEREFORE, The conditions of this obligation are such that if the Principal, in conducting such surface mining operations, faithfully performs the requirements of the permit, these rules, and the act, then this obligation shall be void; otherwise the obligation shall remain in full force and effect. In accordance with RCW 78.44.087, this bond secures completion of reclamation for the area to be surface mined and related costs after the signature date of this bond and any previously disturbed areas on the Premises on which reclamation has not been satisfactorily completed and approved.

PROVIDED, However, the Surety shall not be liable under this bond for an amount greater in the aggregate than the sum designated in the first paragraph hereof and any reasonable legal fees that the department may incur to recover the security under RCW 78.44.240. The Surety shall not be liable for surface mining performed on the Premises after a date sixty days after the Surety mails a cancellation notice to the Principal and the Department of Natural Resources, Olympia, Washington. The bond shall remain in full force and effect as respects obligations related to surface mining performed on the Premises before that date unless the Principal files a substitute bond or other performance security, approved by the Department of Natural Resources, or unless the Department of Natural Resources otherwise releases the Surety in writing.

Signed, sealed and dated this. . . . day of. . . . . .
. . . . . , ...

(3) Bonds submitted under RCW 78.44.087 shall contain a legal description of the area for which a reclamation permit has been issued. An acceptable legal description for bonds takes this form: "a portion of sec. 15 T2N R3E." After July 1, 1994, the department will generally not accept metes and bounds descriptions.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-120, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040. 92-20-059 (Order 605), § 332-18-120, filed 10/2/92, effective 11/2/92; Order 86, § 332-18-120, filed 10/27/70, effective 11/28/70.]

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency.

WAC 332-18-130 Bank letters of credit. The performance security required by RCW 78.44.087 may be in the form of a bank letter of credit.

(1) The department will accept a bank letter of credit under RCW 78.44.087 only if the letter of credit is established in an amount equal to the estimated cost of completing reclamation according to the approved reclamation plan or minimum reclamation standards and related administrative overhead for the area to be surface mined during the next thirty-six month period and any previously disturbed areas for which a reclamation permit has been issued and on which the reclamation has not been satisfactorily completed and approved.

(2) If the letter of credit is issued by a bank that has an office within the state of Washington, the department may accept the letter of credit if it:

(a) Is issued by a bank that is financially sound and is authorized to do business in the state of Washington;

(b) Does not state that it is subject to the uniform customs and practice for documentary credits; and

(c) Is in the form described in subsection (4) of this section.

(3) If the letter of credit is issued by a bank that does not have an office within the state of Washington, the department may accept the letter of credit if it:

(a) Is in the form described in subsection (4) of this section; and

(b) Is accompanied by a letter of confirmation that:

(i) Is issued by a bank that is financially sound, that is authorized to do business in the state of Washington, and that has an office within the state of Washington;

(ii) States that the confirming bank will honor the letter of credit; and

(iii) States that the letter of confirmation is subject to the Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400.

(4) Unless the department determines that a different form is desirable or required, any letter of credit filed with the department under RCW 78.44.087 shall:

(a) Be in writing;

(b) Be signed by the issuer;

(c) Conspicuously state that it is a letter of credit and is issued on behalf of the person whose performance it is intended to secure;

(d) Identify the reclamation permit number to which it pertains;

(e) Identify the department of natural resources, state of Washington, as the sole beneficiary;

(f) State that it is irrevocable;

(g) State the date upon which it will expire and provide that the expiration date will be automatically extended for one year from that date or any future expiration date unless, no later than sixty days before any expiration date, the issuing bank notifies the department in writing by registered mail of the bank's election not to renew; and shall

(h) Expressly provide that any draft or demand for payment must be accompanied by the department's signed statement that the person whose performance the credit is intended to secure is in default of the obligations imposed by chapter 78.44 RCW.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-130, filed 6/30/94, effective 8/2/94. Statutory Authority: RCW 78.44.040. 92-20-059 (Order 605), § 332-18-130, filed 10/2/92, effective 11/2/92.]

WAC 332-18-140 Interest in real property in lieu of other performance security. (1) The department may, at its discretion, accept a security interest in real property instead of other performance security if the reclamation permit holder or applicant provides the following if required by the department:

(a) An opinion of value by a land appraiser licensed by Washington state indicating that the real property exceeds the amount of the performance security by at least one hundred percent;

(b) Suitable access, as determined by the department, for possible public entrance onto the property;

(c) A title insurance policy in favor of the department verifying clear title and indicating that the property is free of liens or other encumbrances; and

(d) Any other materials requested by the department, such as insurance to protect the department's interest in the real property or an environmental hazard assessment.

(2) The department may require additional opinions of value by a land appraiser licensed by Washington state to assure that the real property exceeds the amount of the performance security by at least one hundred percent.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-140, filed 6/30/94, effective 8/2/94.]

WAC 332-18-150 Permit transfers. (1) The department shall approve permit transfers under the provisions of RCW 78.44.171 if the new permit holder provides the following documents:

(a) A revised reclamation plan together with:

(i) Written approval of all persons having a possessory interest in the land;

(ii) A revised Form SM-6 approved by the local government if a new subsequent use of the permit area is proposed;

(iii) A SEPA checklist. This checklist shall address only those impacts relating to the revised reclamation plan.

(b) Acceptable performance security as determined by the department pursuant to RCW 78.44.120.

(c) Written approval of the permit transfer signed by the former permit holder. The department may transfer the reclamation permit without the permission of the former permit holder if a declaration of abandonment has been issued according to RCW 78.44.220.

(d) Written notification from the new permit holder that they assume all duties of the former permit holder to reclaim the surface mine.

(2) The department may waive the requirement for a revised reclamation plan when it finds that the existing reclamation plan meets the minimum reclamation requirements.

(3) The department shall not transfer the reclamation permit until this permit and all others held by both the former and the new permit holders are in compliance with the act, these rules, the reclamation permit, and any orders of the department. This requirement may be waived upon approval of a plan and schedule that will result in compliance within eighteen months of the permit transfer date. This plan and schedule shall be considered as part of the reclamation plan, and failure to comply with the plan and schedule shall constitute violations of this chapter.

[Statutory Authority: RCW 78.44.040, 34.05.220, 43.21C.135 and 78.44.250. 94-14-051, § 332-18-150, filed 6/30/94, effective 8/2/94.]

Chapter 332-20 WAC
GRAZING LANDS

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-20-040	Regulations for grazing leases and permits. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-060	Grazing leases—Limitation of leased area. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-070	Grazing leases—Assignment of. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-080	Grazing leases—Improvements become property of state upon cancellation of lease. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-090	Grazing leases—Ownership of improvements to be designated. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-100	Grazing leases—Re-lease—Application—Application for lease by a third party. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-110	Grazing leases—Prior lessee informed of third party application. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-120	Grazing leases—Preference to prior lessee. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-130	Grazing leases—Cooperation. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-140	Grazing leases—Rental. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-150	Grazing leases—Terms of leases and rental adjustments. [Rules (part), filed 12/3/63.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-190	Grazing permits—Special conditions of preference. [Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-240	Grazing fees—Exceptions to usual fees. [Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-280	Organization and composition of advisory boards. [Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.
332-20-310	Range management. [Rules (part), filed 12/3/63; Permit Range Regulation § VIII, effective 6/1/59.] Repealed by 83-21-018 (Order 402), filed 10/7/83. Statutory Authority: RCW 79.28.050 and 79.28.040.

WAC 332-20-010 Range management objectives. The general objectives of the department in its management of state-owned range lands is to provide for the maximum utilization of the range resource consistent with the principles of multiple use and proper land conservation measures. Coincident with these general objectives, the department shall, with equal priority, seek to:

(1) Secure the highest return to the state under good management practices;

(2) Perpetuate the natural resources on both state and related lands through wise use, protection, and development;

(3) Provide the best practical, social, and economic correlation of the use of state lands with adjacent lands; and

(4) Stabilize that part of the livestock industry which makes use of state land through administrative policy and management practices which conform to the requirements of practical operation.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-010, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-020 Grazing management. Management of state lands for grazing purposes will be based upon that grazing capacity which permits maximum forage utilization and seeks to maintain or improve to "good" condition range as defined by the soil conservation service. Grazing capacity will be established after consideration of historical stocking rates, forage utilization, range condition, and trend. Pertinent range research findings of Washington State University and the advice of the soil conservation service will be considered in the management of the grazing resources.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-020, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations (part), effective 6/1/59.]

WAC 332-20-030 Definitions. For purposes of this chapter:

(1) "Carrying capacity" is the acreage required to adequately provide forage for an animal unit (AU) for a specified period without inducing deterioration of vegetation condition or soil;

(2) "Range condition" is the relation between current and potential condition of the range site;

(3) "Animal unit" (AU) is equal to one cow and her nursing calf or their equivalent;

(4) "Sheep unit" is equal to one ewe and her nursing lamb or their equivalent;

(5) "Free use permit" is a permit given in exchange for the use of land that is owned or controlled by a permittee and is within a permit range;

(6) "On and off permit" is a permit issued to an owner of range land within a permit range which authorizes the use of an entire range area but establishes no preference right;

(7) "Bonus bid" is a sum of money offered for a grazing permit on state land in addition to regular annual charges and is to be paid once at the time of the execution of the grazing permit;

(8) "Commissioner" means the commissioner of public lands;

(9) "Department" means the department of natural resources as defined in RCW 43.30.030;

(10) "Board" means the board of natural resources as defined in RCW 43.30.040;

(11) "Area" means the field administration unit of the department of natural resources;

(12) "Person" includes any public or private corporation as well as an individual or partnership;

(13) "Base ranch property" means a place on which to hold and feed the permitted units of livestock prior to and after the grazing season;

(14) "Nonuse" means that no livestock will be turned out on the permit range;

(15) "Demit" means that less than ninety percent of the permitted or allowed animal units are turned out on the permit range;

(16) "Crossing permit" is a temporary permit to allow livestock to utilize forage while crossing state-owned or controlled land;

(17) "Operational permit" is a temporary permit to allow horses or pack animals to be on state-owned or controlled land while operating a commercial enterprise.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-030, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-050 Grazing permit—Qualifications. No person shall hold a permit on state land until they have attained the age of eighteen. The applicant must have two years of experience in the grazing or handling of livestock or education in range or livestock management and financial resources to carry out the proposed grazing operation.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-050, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-160 Permit range allotments. State lands suitable for grazing may be divided into permit range allotments as may be deemed practical by the department. Allotments may include nonstate lands under special arrangements with the owner. For each allotment the department may:

(1) Establish the kind and number of livestock to be permitted thereon;

(2) Establish the period of grazing;

(3) Regulate the entry of livestock; and

(4) Develop and establish the most practical and efficient methods of stock management, forage utilization, and range improvements.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-160, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § I, effective 6/1/59.]

WAC 332-20-170 Special use grazing permits—Issuance. The department may issue special use grazing permits on range allotments under the following conditions:

(1) Every person must submit an application to the department for a special use grazing permit on state lands or other lands administered in connection therewith;

(2) The department may require permittees to give good and sufficient bond to insure payment of all damages sustained by the state through violation of regulations or terms of the permit;

(3) Special use permits may be issued for a term not to exceed five years;

(4) Special use permits shall be validated each year by letter from the department to the permittee;

(5) Special use permits may be issued for the following purposes:

(a) On and off permits may be issued and requirements imposed to herd or handle the livestock to prevent trespassing on range that is not subject to the permit;

(b) Crossing permits may be issued to those persons wishing to drive livestock across state lands or range allotments;

(c) Operational permits may be issued to persons for livestock actually needed in conducting permitted or commercial operations on state lands or range allotments;

(6) Special use permits may not be assigned or used by any person other than the permittee except by prior written consent of the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-170, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § II et seq., effective 6/1/59.]

WAC 332-20-180 Preference grazing permits. A preference establishes eligibility to persons for grazing permits on state range allotments. A permit authorizes the grazing of livestock under specific conditions and expires on a specified date. A preference continues until cancelled or revoked. Preference permits are issued under the following conditions:

(1) A person may acquire such permit by authorized prior use, gift, or by transfer through purchase or inheritance of base ranch property or livestock;

(2) The ownership or control of base ranch property must be maintained;

(3) A permittee must be the owner of the livestock placed on state ranges under his permit. Cattle must carry the brand of the person holding the preference permit;

(4) Preference permits may not be assigned or used by any person other than the permittee except by prior written consent of the department;

(5) No person shall hold a preference permit authorizing grazing in excess of 600 animal units;

(6) Preference permits may be granted to the holders of temporary permits only after such temporary permits have been held for a minimum period of five years;

(7) Nonuse of preference permits not in excess of three years for any seven-year period is permissible, provided approval of the department is first obtained and prescribed nonuse fees are paid; and

(8) Demits may be allowed provided approval of the department is first obtained and demit fees are paid.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-180, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-191 Grazing permits—Legal effect. Grazing permits transfer no right, title, or interest in any lands or resources held by the department except authorized livestock forage.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-191, filed 10/7/83.]

WAC 332-20-200 Grazing preference permits—Established ranges. The department may grant preference permits for use of established livestock ranges upon consideration of the following factors:

(1) Authorized prior use;

(2) Base ranch property;

(3) Capacity of the range; and

(4) Conversion of a temporary permit.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-200, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-210 Temporary grazing permits. Where new permit range allotments are established or where additional area is added to existing allotments, a temporary grazing permit may be issued for a maximum of five years.

A temporary grazing permit will be issued on the basis of the highest cash bonus offer received by sealed or oral public auction bids from qualified applicants. An applicant must qualify in base ranch property and ownership of livestock.

Before a temporary grazing permit is offered for sealed or oral public auction bidding the carrying capacity, permitted units, and grazing season for the range will be determined and advertised. The bidding will be on a cash bonus over and above the annual grazing fee. Temporary grazing permits will be annually validated and may be conditioned or limited by the department based upon range condition and carrying capacity.

When the increased capacity of a range results from range improvement work performed by the expenditures of a holder of a preference permit when such work is done with the department's written approval, the holder of the preference permit shall have the right to obtain a temporary grazing permit by meeting the highest cash bonus offer made by a qualified applicant at auction.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-210, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § III (part), effective 6/1/59.]

WAC 332-20-215 Free use authorization. Free use authorization will be for a specific number of animal units and will be incorporated in department permits. Authorization will be given in exchange for grazing use of lands owned or controlled by a permittee and used within a permit range. Such land will be a part of the total permit and will allow other permittees use of the grazing resource.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-215, filed 10/7/83.]

WAC 332-20-220 Grazing permits—Fees—Annual adjustments. A fee will be charged for the grazing of all livestock on state lands. The grazing fee will be determined by use of a formula indicated below. The fees so established shall be adjusted annually by relation to market prices of livestock for the previous year. Further adjustments in the formula may be made by the department as additional information or changing conditions require.

Grazing fee formula: $$\frac{L \times S \times G \times P + A}{(1 + LHT)} = \text{AUM Fee}$$

AUM Fee x Unit Equivalent x M = AUM Charge

Symbol explanation:

- L - Proportion of average stockman's investment assigned to land.
- S - Landlord's fair share of land income.
- G - Average pound gain in livestock weight for permitted grazing season, cattle and sheep to be separately computed.
- P - Average past year's selling price of livestock per pound from the reports of the Agricultural Marketing Service of the United States Department of Agriculture.
- LHT - The leasehold tax as established by law and administered by the state department of revenue.
- M - Number of months in permitted grazing season.
- A - Permittee's share of assessments on permit range lands.
- AUM Fee - Fee to be charged per animal unit month of grazing.

For purposes of unit equivalent per animal, the following ratios will apply:

Cattle:	Cow and calf	1.0 Animal Unit
	Cow	1.0
	Bull	1.0
	Yearling	.66
	Fall calf	.5
	Two year old	1.0
	Horses	1.5
Sheep:	Ewe and one lamb	1.0 Sheep Unit
	Ewe and twin lambs	1.2
	Ram	1.0
	Ewe	1.0

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-220, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-230 Grazing permits—Payment of fees in advance. All grazing permit fees will be paid in advance of the opening date of grazing periods or as otherwise authorized by the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-230, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § IV (part), effective 6/1/59.]

WAC 332-20-250 Grazing permit—Termination. The department may cancel or suspend grazing permits or preferences, in whole or in part, for a violation of the terms of the permit or of these regulations.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-250, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § V, effective 6/1/59.]

WAC 332-20-260 Decision review allowed. Any decision by the department on range matters may be reviewed with the area manager of the respective area. If the area manager cannot settle the matter, it will be forwarded to the department supervisor.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-260, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VI, effective 6/1/59.]

WAC 332-20-270 Associations and boards. In order to obtain a collective expression of views and recommendations of the state grazing permittees concerning the management and administration of state lands, and to encourage maximum participation by permittees in actual management of the range where not provided for by other regulations, the department shall provide for recognition of and cooperation with the various groups of permittees as follows:

(1) Livestock associations with advisory boards representing the range users of state lands; and

(2) Advisory boards without associations representing the range users of state land.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-270, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulations § VII (part), effective 6/1/59.]

WAC 332-20-290 Informal recommendations. The department recognizes the public interest in its management of state lands and the multiple use of these lands. The department is directed to give full consideration to the expressions of the views of any interested person, industry, or organization for the equitable solution of competing public interests.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-290, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-300 Laws and regulations relating to livestock. The department will cooperate with the state, county, and federal officers in the enforcement of all the laws and regulations relating to livestock health including:

(1) Compliance with livestock quarantine regulations and such other sanitary measures as may appear necessary to prevent nuisances and ensure proper sanitary conditions on state range lands; and

(2) Requiring owners of all livestock which are allowed to cross any state range lands to comply with local livestock laws of the state of Washington and the county where the state land is located.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-300, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § VII (part), effective 6/1/59.]

WAC 332-20-320 Grazing permits—Range improvement. Agreements must be made with the department in connection with the construction of range improvements on state range lands. Such agreements must address ownership of the improvements and its disposition at the end of the permit term. Grazing permit fees may be adjusted to compensate permittees for the construction of range improvements or performance of range conservation practices where prior written approval has been given by the department.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-320, filed 10/7/83; Rules (part), filed 12/3/63; Permit Range Regulation § IX, effective 6/1/59.]

WAC 332-20-330 Management agreement. The department may enter into a coordinated resource management plan and other agreements with any person for the protection, preservation, and use of grazing areas in multiple ownership.

[Statutory Authority: RCW 79.28.050 and 79.28.040. 83-21-018 (Order 402), § 332-20-330, filed 10/7/83; Rules (part), filed 12/3/63.]

WAC 332-20-340 Sale of grazing and other low priority lands—Objective. It is the objective of the department of natural resources in the management of public lands used primarily for grazing and similar low priority purposes to:

(1) Obtain the greatest possible monetary return for the trust to which such land is assigned, consistent with good management practices.

(2) Encourage the development of such lands for their highest and best use.

[Resolution No. 79, § 1, filed 10/5/67.]

WAC 332-20-350 Sale of grazing and other low priority lands—Definitions. The following definitions are applicable to RCW 79.01.301 and these rules shall be used in connection with applications, reports, leases, and other documents issued in connection therewith:

(1) "Department" shall mean the department of natural resources.

(2) "Commissioner" shall mean the commissioner of public lands.

(3) "Board" shall mean the board of natural resources as established by chapter 38, Laws of 1957 (chapter 43.30 RCW).

(4) "Proper office" shall mean the authorized office of the department of natural resources in Olympia, Washington.

(5) "Grazing land" shall mean those granted trust lands which at the present are used primarily for grazing.

(6) "Irrigated agricultural lands" shall mean any lands under irrigation which are used for the production of any agricultural commodities.

(7) "Public land" shall mean those lands conveyed to the state of Washington by the federal government and managed in trust by the department for the support of common schools, university purposes, agricultural college purposes, scientific school purposes, state normal school purposes, the erecting of public buildings at the state capitol, and for state charitable, educational, penal and reformatory institution purposes.

(8) "Low priority land" shall mean that grazing or nonirrigated land which may appear to have its highest potential for maximizing returns when used as irrigated agricultural land.

(9) "Public interest" shall mean the interest of the public in obtaining the greatest possible monetary return from granted lands for the purposes set forth in the Enabling Act of the state Constitution.

[Resolution No. 79, § 2, filed 10/5/67.]

WAC 332-20-360 Sale of grazing and other low priority lands—Applications to purchase. All applications to purchase low priority land for the purpose of development as irrigated agricultural land shall be reviewed by the board.

Applications for the purchase of land for development as irrigated agricultural lands will be received during business hours in the proper office of the department. A deposit of not less than ten dollars per acre must be submitted with the application. Each application shall be accompanied by a complete and general plan of development of the area considered for purchase, including the following:

(1) Anticipated date of commencement of development.

(2) Anticipated date of completion of development.

(3) Type of development.

(4) Source of water and the total estimated cost of water, including the cost of wells or water diversion.

(5) Access or right of way available to the area.

(6) Type of proposed cropping.
(7) Anticipated production.
(8) Market for production.
(9) Anticipated gross return.
(10) Anticipated value per acre when irrigation development is completed and anticipated tax payment per acre based on present millage levies.
(11) A plat showing the area or areas to be developed for irrigation on the lands under application to purchase.
(12) Method of financing development.
(13) Plans for drainage.
(14) Any further information the board may require.

[Resolution No. 79, § 3, filed 10/5/67.]

WAC 332-20-370 Sale of grazing and other low priority lands—Protection. The board shall protect the public interest in the trust in considering applications to purchase. In considering the management of individual tracts of state land, the board shall include in its consideration of the financial benefits that may accrue to the particular beneficiary of such trust land any increased financial benefits that the beneficiary may receive from direct and indirect state and local taxes, including improvement in values resulting from private development and the local taxation benefits therefrom, if the property were to be sold into private ownership.

[Resolution No. 79, § 4, filed 10/5/67.]

WAC 332-20-380 Sale of grazing and other low priority lands—Information furnished the board. The department, in addition to the information provided by the applicant, shall also prepare for the board the following information:

(1) Department plans for development of the tract if retained in state ownership.
(2) A comparison of anticipated rental returns and appreciation in value and rental income to the trust in comparison with the anticipated economic benefits to the locality in classifying such properties for sale.
(3) A written recommendation to the board.

[Resolution No. 79, § 5, filed 10/5/67.]

WAC 332-20-390 Sale of grazing and other low priority lands—Written notice. Written notice shall be given to the applicant at least thirty days prior to the meeting of the board at which consideration will be given to his application. The applicant may appear at the board meeting in support of his application, but is not required to do so.

[Resolution No. 79, § 6, filed 10/5/67.]

WAC 332-20-400 Sale of grazing and other low priority lands—Contracts. When the board determines that a parcel of low priority lands shall be sold into private ownership for conversion to irrigated agricultural lands, the department shall enter into a contract with the purchaser for the conveyance of the lands to him upon such conditions as the board shall determine to be proper in each case. The conditions fixed by the board shall include the following:

(1) Payment to the department by the purchaser of the full purchase price, plus interest if sold on an installment basis, together with applicable fees.

(2) Completion by the purchaser of an irrigation system in conformity with the plan as set forth with the contract posted with notice of sales. The system must be completed within the time period fixed by the board which shall in no event be longer than five years.

(3) Such other conditions as the board may determine to be appropriate.

In the event the purchaser fails to satisfy any of the conditions fixed by the board, the contract for the conveyance of the lands to him shall be forfeited. The value of any improvements, less damages, made by the defaulting purchaser in partial completion of his irrigation system shall be appraised and fixed by the department. The lands shall be offered at public auction and, if leased or sold within three years to other than the defaulting purchaser, the successful bidder shall pay to the department the value of such improvements for disbursement to the defaulting purchaser.

[Resolution No. 79, § 7, filed 10/5/67.]

Chapter 332-21 WAC
STATE URBAN LANDS

WAC

332-21-010	Promulgation.
332-21-020	Identification of urban lands.
332-21-030	Management of urban lands.
332-21-040	Marketing lands not sold at public auction.
332-21-050	Land bank technical advisory committee.

WAC 332-21-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority of chapter 79.66 RCW to establish procedures for the department of natural resources management of state-owned urban lands. These regulations are designed to establish practical procedures to achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed on such lands by law.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-010, filed 9/10/84.]

WAC 332-21-020 Identification of urban lands. The department shall, at intervals not greater than once every two years, identify trust lands expected to convert to commercial, residential, or industrial uses within the next ten years as provided in RCW 79.66.010. The board shall designate such trust lands as urban land if deemed suitable.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-020, filed 9/10/84.]

WAC 332-21-030 Management of urban lands. (1) The department, in addition to the economic evaluation required by RCW 79.01.095, shall periodically evaluate urban lands to determine the appropriate management prescription for each parcel.

(2) The department shall, as a part of its periodic evaluation, review the appropriate uses of urban lands with local governments in accordance with RCW 79.01.784.

(3) Where urban land is to be exchanged or sold, other than by public auction, the department shall have the value determined by a qualified appraiser. All appraisals shall be

sent to the board at least ten days in advance of any board action on such exchange or sale.

(4) The department shall annually report to the board on its major activities and accomplishments in the past year and its plans for the ensuing year.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-030, filed 9/10/84.]

WAC 332-21-040 Marketing lands not sold at public auction. The department may, upon approval of the board, market lands not sold at public auction in accordance with RCW 79.01.612. Such property may not be offered at less than the appraised price approved by the board. The department shall select the marketing proposal that demonstrates likelihood of successful marketing at the lowest cost. The department shall report completed sales to the board.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-040, filed 9/10/84.]

WAC 332-21-050 Land bank technical advisory committee. The technical advisory committee authorized by RCW 79.66.010 shall provide professional advice and counsel to the board regarding land bank sales, purchases, and exchanges involving urban property.

[Statutory Authority: Chapter 79.66 RCW. 84-19-008 (Resolution No. 465), § 332-21-050, filed 9/10/84.]

Chapter 332-22 WAC
STATE LAND LEASING PROGRAM RULES

WAC

332-22-010	Promulgation.
332-22-020	Definitions.
332-22-025	Bonus bid.
332-22-030	Applications to lease.
332-22-040	Lease auction procedure.
332-22-050	Lease procedure—Amendment.
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332-22-090	Notice to lessee of public auction.
332-22-100	Existing lease negotiation.
332-22-105	Initial lease for commercial, industrial, or residential uses by negotiation.
332-22-110	Mandatory lease terms.
332-22-120	Assignment.
332-22-130	Residential leases.
332-22-140	Expired leases—Occupancy.
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332-22-160	Performance security.
332-22-170	Geothermal resources lease—Area.
332-22-180	Geothermal resources lease—Plan of development.
332-22-190	Geothermal resources lease—Term.
332-22-200	Geothermal resources lease—Annual rental.
332-22-210	Geothermal resources lease—Production royalty.
332-22-220	Geothermal resources lease—Minimum annual royalty.
332-22-230	Geothermal resources lease—Unit plans.
332-22-240	Geothermal resources lease—Records.

WAC 332-22-010 Promulgation. This chapter is promulgated by the board of natural resources pursuant to the authority granted by RCW 79.01.242 to establish procedures for the department's state land leasing program. The board of natural resources recognizes that in order to obtain a fair market return to the trust, certain of its lands should be retained and managed through leasing. These rules are designed to establish practical leasing procedures and achieve the best possible return to the designated trust beneficiary consistent with any other obligations imposed by law on such lands.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-010, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-010, filed 1/20/81.]

WAC 332-22-020 Definitions. Insofar as these rules apply, these definitions will be utilized.

(1) "Commissioner" means the commissioner of public lands.

(2) "Department" means the department of natural resources as defined in RCW 43.30.030.

(3) "Board" means the board of natural resources as defined in RCW 43.30.040.

(4) "Fair market rental value" means the total rental that a property would command on the open market as determined by either comparable rental rates being paid for comparable uses or by the current fair market value of the property times the applicable capitalization rate.

(5) "Fair market value for improvements" is as defined in RCW 79.01.136.

(6) "Highest and best use" means the legal use that will produce the highest return to the trust over an extended period of time, including interim use.

(7) "Interim use" means any use of the land for which a rent can be charged before the planned use is attained.

(8) "State lands" means lands owned by the state or managed by the department excluding marine and aquatic lands.

(9) "Person" means a person at least 18 years of age, a partnership, a corporation or a government agency.

(10) "Bonus bid" means the dollar amount offered, to be paid one time only, over and above the periodic rent or the share of the crop.

(11) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances, as defined in RCW 79.76.030.

(12) "Commercially feasible geothermal resources" means that amount of geothermal steam, hot water, steam condensate, by-products thereof, minerals and chemicals which are used for:

(a) The generation of electricity, and

(b) Which are derived, generated or manufactured from the premises or from a unit plan which includes the lease premises, sufficient for commercial sales, or

(c) Which would warrant construction of facilities for processing or sale of such product or by-products.

(13) "By-products" means

(a) Any mineral or minerals (exclusive of oil and hydrocarbon gas) which are found in solution or in association with geothermal steam or hot brine and which have a value of less than seventy-five percent of the value of the geothermal steam or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves, or

(b) Commercially demineralized water

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-020, filed 2/20/92, effective 3/22/92. Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-020, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-020, filed 1/20/81.]

WAC 332-22-025 Bonus bid. On a new lease or an existing lease advertised for negotiation there may be a bonus bid.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-025, filed 9/10/84.]

WAC 332-22-030 Applications to lease. (1) Application to lease will be considered only for state lands as may be shown to be available for lease in department records or when an existing lease will expire within one hundred twenty days or leases which can be considered for conversion to a higher and better use.

(2) Application to lease will be considered for lands owned by other governmental entities, which are being managed by the department, only after the owner has made a written request to the department or entered into an agreement with the department to make the same available for leasing pursuant to these rules.

(3) An application to lease shall be made upon forms prescribed by the department which shall be accompanied by fees prescribed by the board. The fee shall not be refunded unless the state lands applied for are not available for leasing. Applications not accompanied by the proper fees shall be rejected.

(4) The commissioner may withhold from leasing any state land either before or after an application to lease is made. The commissioner may reject any and all applications to lease.

(5) Any person authorized to do business in the state of Washington may apply for a lease of state lands.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-030, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-030, filed 1/20/81.]

WAC 332-22-040 Lease auction procedure. (1) The department will determine which parcels of state land will be offered for public auction from:

(a) Applications received;

(b) Evaluation of land not presently leased; and

(c) Land with a lease expiring, and on which it is in the best interest of the state to offer at auction for the same or different uses. The department shall give thirty days written notice to the existing lessee of such action.

(2) The department will establish the minimum qualifications required for a person to bid at public auction.

(3) Sealed bids will be accepted up to the time set and at the location specified in the notice of leasing (RCW 79.01.252). The successful bidder will be the person with the most acceptable proposal which complies with the criteria set forth in the notice of public auction.

(4) Oral auctions will be conducted by the auctioneer at the time and place designated in the notice of leasing and the lease shall be awarded to the highest bidder.

(5) The commissioner may reject any or all bids, if it is deemed in the best interest of the state.

(6) Any monies held on deposit from an applicant will be credited to the lease if they are the successful bidder or will be refunded.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-040, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-040, filed 1/20/81.]

WAC 332-22-050 Lease procedure—Amendment. Existing leases may be amended through negotiation between the lessee and the department but the term of any such amendment shall not exceed the specified maximum lease period as set forth in RCW 79.01.096 or 79.12.570. Such amendments shall be in writing and signed by both parties.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-050, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-050, filed 1/20/81.]

WAC 332-22-060 Lease procedure—Rental adjustments. All leases shall provide for periodic rental reevaluation and adjustment, except leases with rentals based upon a percentage of crop or income. The lessee may request rental adjustments as provided in RCW 79.01.096.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-060, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-060, filed 1/20/81.]

WAC 332-22-070 Lease procedure—Notice. Notice of all existing leases which will be negotiated by the department shall be published in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-070, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-070, filed 1/20/81.]

WAC 332-22-080 Rights to re-lease denied. Claimed rights to re-lease or to renew a lease will not be authorized or recognized by the department.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-080, filed 1/20/81.]

WAC 332-22-090 Notice to lessee of public auction. The current lessee will be notified if the state intends to offer the leased land at public auction.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-090, filed 1/20/81.]

WAC 332-22-100 Existing lease negotiation. (1) Leases which will be used for the same or similar purposes may be offered for negotiation.

(2) A notice of intention to negotiate a lease must be published once in two newspapers of general circulation in the locality of the land, one of which shall be in the county where the land is located, within ninety days of the date of commencement of negotiations. Such notice shall give the legal description, the date of expiration, the intended land use, the office to which application can be made, the final date to file a written request to lease, and such other information as deemed necessary.

(3) The existing lessee will be mailed the criteria for leasing on the same date as mailing to the newspaper the notice of intention to negotiate.

(4) A written request to lease from a new applicant must be received in the designated office on the specified date to be considered. It must describe the proposed terms and conditions and the contemplated use of the land and contain a certified check or money order payable to the department of natural resources for the amount of any bonus bid plus a $100.00 deposit. The envelope must be marked "Sealed bid for lease . . . .; expiration date . . . ., and give the applicant's name."

(5) The department shall review all written requests to lease before negotiation with the existing lessee is commenced. If negotiation is satisfactorily completed, award of the lease will be made to the existing lessee. If negotiation with the existing lessee is not successful, the highest qualified offer will be treated as a minimum bid at public auction and all lower offers will be returned. The lease will then be offered at public auction. If there are no bidders at the auction, the lease will be awarded to the applicant who has made the highest qualified offer.

(6) Negotiated leases may not exceed the maximum term authorized by RCW 79.01.096 or 79.12.570 and must have a term commencing within one hundred twenty days of date of starting negotiations.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-100, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-100, filed 1/20/81.]

WAC 332-22-105 Initial lease for commercial, industrial, or residential uses by negotiation. (1) The department may negotiate initial leases to authorize commercial, industrial, or residential uses on specific parcels of land zoned for such uses provided:

(a) Not more than one application is received by the department to lease the property.

(b) The department determines that a rent of at least fair market rental can be obtained through negotiation.

(c) The department publishes a notice of intent to lease which contains the legal description and zoning of the property, the office to which application to lease can be made, and the final date to submit a written request to lease. The notice shall be published not more than thirty days nor less than twenty days immediately preceding commencement of negotiation in two newspapers of general circulation in the locality of the state land, one of which shall be in the county where the land is located.

(d) The department shall report to the board of natural resources on each initial lease entered into by negotiation. The report shall include the fair market value of the property, rental and lease terms.

(2) The department may negotiate initial leases at fair market rental to authorize placement and maintenance of communication equipment in or on electronic site buildings and on electronic site towers.

[Statutory Authority: RCW 79.01.242. 85-11-012 (Order 442, Resolution No. 482), § 332-22-105, filed 5/8/85; 84-19-007 (Resolution No. 464), § 332-22-105, filed 9/10/84.]

WAC 332-22-110 Mandatory lease terms. Each lease negotiated or placed at public auction shall contain the following terms:

(1) The use or uses to which the land is to be employed. Provision must be made by insurance or otherwise, to protect the department against third-party claims arising from the uses made of the property by the lessee.

(2) Improvements which exist on the land at the time lease negotiation is completed or public auction is held shall be specifically described and, unless otherwise designated shall be considered as a part of the value of the land. Improvements may be required to be constructed as a condition of a lease. All existing improvements or those authorized or required under the conditions of the lease must be maintained at the sole cost of the lessee unless otherwise provided. All improvements must be protected against casualty loss in a manner satisfactory to the department unless otherwise provided. Improvements placed upon the land by the lessee shall become the property of the state at the end of lease term unless otherwise provided.

(3) Any lease with a term of more than ten years shall require a plan of development which includes scheduled completion dates for all required activities, improvements, or other actions.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-110, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-110, filed 1/20/81.]

WAC 332-22-120 Assignment. All assignments of leasehold rights, whether total, partial or for security purposes, must be approved in writing by the department. Department approval of assignments may be conditioned upon a number of factors including rental adjustment; insurance coverage adjustment; renegotiation of improvement ownership; or changes in authorized land use. The department may require assurance of the performance capability of the proposed assignee by any feasible means, including the filing of an acceptable surety arrangement.

An assignment will not be considered to be a termination of the lease within the meaning of RCW 79.01.092.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-120, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-120, filed 1/20/81.]

WAC 332-22-130 Residential leases. A lessee desiring a waiver or modification of residential lease conditions, as authorized by RCW 79.01.242(5), may make a written request to the board and to the department setting forth the proposed change and its reasons. The department shall make recommendations to the board regarding any such proposal.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-130, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-130, filed 1/20/81.]

WAC 332-22-140 Expired leases—Occupancy. (1) Extension of any lease may be authorized by the department for a maximum of one year from date of expiration if it is deemed to be in the best interest of the state. Such extension shall be issued upon such terms and conditions as the department may prescribe which may include an adjustment in rent.

(2) If a proposed use for the premises has not been determined, the department may issue a permit for an interim use to the last lessee for up to a maximum period of five years from date of expiration of the lease.

The permit may be issued in the same general form as a lease for a similar use of the premises under such terms and conditions as the department may prescribe. Upon expiration or termination of the permit, the premises can only be leased at public auction.

[Statutory Authority: RCW 79.01.242. 84-19-007 (Resolution No. 464), § 332-22-140, filed 9/10/84; 81-03-059 (Order 350, Resolution No. 321), § 332-22-140, filed 1/20/81.]

WAC 332-22-150 Temporary use permits. The board authorizes the department to issue temporary use permits of state land not to exceed one year which may not be renewed. This permit will only be issued upon receipt of fair market value for the period of occupancy.

[Statutory Authority: RCW 79.01.242. 81-03-059 (Order 350, Resolution No. 321), § 332-22-150, filed 1/20/81.]

WAC 332-22-160 Performance security. The department may, at its option, require the lessee to file a cash bond, savings account assignment, approved corporate surety bond or other form of security satisfactory to the department in an amount sufficient to guarantee performance of the terms and conditions of the lease or contract. Such security, if required, shall be submitted prior to issuance of the lease. The department may reduce or increase the amount of the security as a result of operational changes requiring different levels of performance. The department may allow a lessee to file a single security device acceptable to the state, in an amount set by the department covering all of the lessee's state leases.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-160, filed 2/20/92, effective 3/22/92.]

WAC 332-22-170 Geothermal resources lease—Area. Leases to explore for and develop geothermal resources shall not exceed 640 acres or one entire government-surveyed section. Leases will be issued at the sole discretion of the department and only on land where the state controls the surface rights and the agency managing that land authorizes this use.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-170, filed 2/20/92, effective 3/22/92.]

WAC 332-22-180 Geothermal resources lease—Plan of development. An applicant for a geothermal resources lease shall submit a plan of development to the department for approval with the lease application and every five years thereafter. The plan of development shall describe all activities, improvements, or other actions that will contribute to the exploration, development, or production of the property for the next five years, including scheduled dates for completion.

One hundred and twenty days before each five-year anniversary date, the lessee shall deliver to the department, for its approval, a detailed plan of development which incorporates the results of operations from the previous five years.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-180, filed 2/20/92, effective 3/22/92.]

WAC 332-22-190 Geothermal resources lease—Term. Geothermal resources leases shall be for a term of up to 55 years, subject every five years to approval by the department of the current plan of development. If the lessee fails to substantially comply with the plan of development, as determined by the department, the department may elect to terminate the lease.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-190, filed 2/20/92, effective 3/22/92.]

WAC 332-22-200 Geothermal resources lease—Annual rental. The annual rental shall be set by the board of natural resources, but for years one through five the annual rental shall be not less than $1.25 per acre or $250 whichever is greater, and for years six through ten, shall be not less than $2.50 per acre or $500 whichever is greater.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-200, filed 2/20/92, effective 3/22/92.]

WAC 332-22-210 Geothermal resources lease—Production royalty. Production royalty payments on geothermal resources leases shall be payable to the department for geothermal resources produced from the lease premises. The schedule of production royalty payments and method of calculating fair market value at either the well or point of shipment shall be detailed in the lease and plan of development: Provided That production royalty rates shall be not less than the cumulative amount of;

(a) Ten percent of the gross proceeds received from the sale of such geothermal resources which are derived, generated or manufactured from the premises sufficient for commercial sales, and

(b) Ten percent of the fair market value thereof of products utilized but not sold, and

(c) Ten percent of the gross proceeds for all by-products derived from the leasehold estate.

The department reserves the right to reassess the production royalty rate at year twenty of the lease and every ten years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted production royalty be less than the 10 percent specified in this section.

Lessee shall have the right to commingle, for the purpose of utilizing, selling or processing the products produced from the leasehold estate with products produced from other land, provided that the lessee shall efficiently meter or gauge the production from the leasehold estate in a manner approved by the state, in order to compute royalty payable on the products or by-products produced from the leasehold estate. The lessee shall furnish a sworn statement showing production for accounting periods required by the department and pay any royalties due.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-210, filed 2/20/92, effective 3/22/92.]

WAC 332-22-220 Geothermal resources lease—Minimum annual royalty. At the beginning of lease year eleven, or at the beginning of the year in which production starts, whichever occurs first, a minimum annual royalty of not less than ten dollars per acre per year, or $2,000, whichever is greater, shall be paid to the department, and shall replace the annual rental. Minimum annual royalty payments shall be credited against production royalties for that year. Minimum royalties paid during the term of the lease are nonrefundable and nontransferable.

The department reserves the right to reassess the minimum annual royalty rate at year twenty of the lease and every ten years thereafter, and adjust the rate to the then fair market value, however in no case shall the adjusted minimum annual royalty be less than the ten dollars per acre, or $2,000 specified in this section.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-220, filed 2/20/92, effective 3/22/92.]

WAC 332-22-230 Geothermal resources lease—Unit plans. (1) The holder(s) of any geothermal resources lease may apply to the department to consolidate their leaseholding for geothermal resources with other entities, including lands not owned by the state, to collectively adopt and operate as a unit under a unit plan. Such consolidation will not serve to extend the term of the lease and all participants must agree to continue payment of royalties provided in the lease through the life of the unit and any extensions of the plan.

(2) When separate geothermal resource rights under lease cannot be developed and operated independently in accordance with an approved well-spacing or well-development program, the commissioner or the commissioner's delegate may require lessees to enter into a unit plan or drilling agreement with other entities when it is in the best interest of the state.

(3) As a condition for authorization to be part of a unit plan, the commissioner or the commissioner's delegate may alter the terms and conditions of the lease(s) so involved when it is in the best interest of the state to do so, and such authorization may be further conditioned upon, but not limited to the following:

(a) Department access to reports and documents it deems necessary, at the sole discretion of the department, to determine if consolidation of the proposed unit plan is in the best interest of the state.

(b) Leaseholds which are only partially included in the unit shall be segregated into separate leases as to the lands committed and not committed as of the effective date of the unitization. The annual rental or minimum annual royalty shall be paid on the leased acreage in the unit independently from other segregated lease areas.

(c) Any apportionment of production or royalties among the separate tracts of land comprising the unit shall include an accounting system, and the department shall have the right to audit such system to protect the interests of the state.

(d) None of the rights of the state as landholder shall be limited or subordinated.

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-230, filed 2/20/92, effective 3/22/92.]

WAC 332-22-240 Geothermal resources lease—Records. A geothermal resources lessee shall furnish to the lessor copies of all reports required by the Geothermal Resources Act (chapter 79.76 RCW).

[Statutory Authority: Chapter 79.12 RCW, as amended by ESB [EHB] 1277 and RCW 79.01.242. 92-06-003, § 332-22-240, filed 2/20/92, effective 3/22/92.]

Chapter 332-24 WAC
FOREST PROTECTION

WAC

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DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-24-001 Invalidity of part of chapter not to affect remainder. [Order 16, § 332-24-001, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.
332-24-010 Forest patrol rates—1960—Western counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)
332-24-020 Promulgation. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-020, filed 11/14/79.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.
332-24-025 Definition. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-025, filed 11/14/79.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-027 Felling of snags. [Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8. 79-12-015 (Order 336), § 332-24-027, filed 11/14/79.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-030 Forest patrol rates—1960—Eastern counties—Notice to assessors. [1960 Notice, filed 3/24/60.] Repealed by Order 128, filed 11/24/71 and by adoption of House Bill 1034 enacted by the 1971 Legislature (1971 ex.s. c 207.)

332-24-050 Snags—County average per acre. [Rule of 1/15/54.] Repealed by 79-12-015 (Order 336), filed 11/14/79. Statutory Authority: RCW 76.04.222 and 1979 ex.s. c 8.

332-24-055 Definitions. [Order 261, § 332-24-055, filed 6/10/76; Order 181, § 332-24-055, filed 3/21/74; Order 16, § 332-24-055, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-056 Purpose of rules. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-056, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-056, filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-057 Spark emitting equipment regulated. [Order 272, § 332-24-057, filed 1/24/77; Order 255, § 332-24-057, filed 5/13/76; Order 181, § 332-24-057, filed 3/21/74.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-058 Substitutions and reduction of requirements. [Order 181, § 332-24-058, filed 3/21/74.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-059 Penalties for violation—Work stoppage notice. [Order 181, § 332-24-059, filed 3/21/74.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-060 Definitions. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-060, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-060, filed 8/7/73; Order 126, § 332-24-060, filed 11/17/71; Order 59, § 332-24-060, filed 7/29/70; Order 16, § 332-24-060, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-061 U.S. Forest Service entry rules. [Order 256, § 332-24-061, filed 5/13/76. Formerly WAC 332-48-050.] Repealed by 80-12-018 (Order 347), filed 8/26/80. Statutory Authority: RCW 76.04.020.

332-24-063 Written burning permit requirements and exceptions. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-063, filed 4/29/83, effective 6/1/83; Order 181, § 332-24-063, filed 3/21/74.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-065 No burning permit required—Small outdoor fires. [Order 169, § 332-24-065, filed 8/7/73.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-070 General rules—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-070, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-070, filed 8/7/73; Order 126, § 332-24-070, filed 11/17/71; Order 16, § 332-24-070, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-080 Burning permits—Recreation and debris fires on state and other lands under the jurisdiction of the department of natural resources. [Order 16, § 332-24-080, filed 2/25/69.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-090 Requirements—Outdoor fire for recreational or debris disposal purposes not requiring a written burning permit. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-090, filed 4/29/83, effective 6/1/83; Order 169, § 332-24-090, filed 8/7/73; Order 126, § 332-24-090, filed 11/17/71 and 3/8/72; Order 16, § 332-24-090, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-095 Recreation and debris disposal fire requirements—Penalty. [Statutory Authority: RCW 76.04.150. 83-10-036 (Order 396), § 332-24-095, filed 4/29/83, effective 6/1/83.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-100 Burning permits—Portions of Clark and Skamania counties. [Burning Permit Rule, effective 10/16/53.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-105 Exemptions from burning permit requirements—Parts of Clark and Wahkiakum counties. [Order 169, § 332-24-105, filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-10501 Exemptions from burning permit requirements—Parts of Wahkiakum County. [Order 234, § 332-24-10501, filed 8/12/75.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-10502 Exemptions from burning permit requirements—Parts of Okanogan County. [Order 235, § 332-24-10502, filed 8/12/75.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-150 Exemptions from burning permit requirements. [Order 157, § 332-24-150, filed 4/2/73; Rule of 4/29/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-160 Exemptions from burning permit requirements—Parts of Asotin County. [Rule of 4/29/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-170 Exemptions from burning permit requirements—Parts of Garfield County. [Rule of 4/29/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-180 Exemptions from burning permit requirements—Parts of Columbia County. [Rule of 4/29/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-185 Exemptions from burning permit requirements—Parts of Cowlitz County. [Order 157, § 332-24-185, filed 4/2/73; Order 16, § 332-24-200 (codified as WAC 332-24-185), filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-185001 Exhibit A—Map. [Order 16, § 332-24-185 (part), (codified as WAC 332-24-185001), Exhibit A—Map, filed 2/25/69.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-190 Exemptions from burning permit requirements—Parts of Walla Walla County. [Rule of 4/29/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-192 Exemptions from burning permit requirements—Parts of Snohomish County. [Statutory Authority: RCW 76.04.020 and 76.04.190. 79-09-120 (Order 331), § 332-24-192, filed 9/4/79; Order 157, § 332-24-192, filed 4/2/73; Docket 236, filed 7/20/66.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-194 Exemptions from burning permit requirements—Parts of Snohomish and Skagit counties. [Order 157, § 332-24-194, filed 4/2/73; Docket 275, filed 5/29/67.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-196 Exemptions from burning permit requirements—Parts of Pacific and Grays Harbor counties. [Order 157, § 332-24-196, filed 4/2/73; Docket 256, filed 10/28/66, 3/30/67.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-197 Burning permits—Extension of burning permit season. [Order 130, § 332-24-197, filed 1/19/72, effective 2/23/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-200 Satisfactory clearance of slash. [Order 4, § 332-24-200, filed 3/1/68.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-210 Slash abatement west of the summit of the Cascade Mountains. [Order 4, § 332-24-210, filed 3/1/68.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-215 Recreation and debris disposal fire requirements—Penalty. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-215, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-220 Slash clearance east of the summit of the Cascade Mountains. [Order 4, § 332-24-220, filed 3/1/68.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-225 Burning barrels. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-225, filed 5/8/87.] Repealed by 91-20-060 (Order 583), filed 9/24/91, effective 10/16/91. Statutory Authority: RCW 76.04.015.

332-24-230 Payment to certificate of clearance fund. [Order 4, § 332-24-230, filed 3/1/68.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-231 Burning permits—Yacolt burn in portions of Clark and Skamania counties. [Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-231, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-231, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-232 Exemption from burning permit requirements—Parts of Clark and Wahkiakum counties. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-232, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-234 Exemption from burning permit requirements—Parts of Okanogan County. [Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-234, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-234, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-236 Exemption from burning permit requirements—Parts of Asotin, Garfield, Columbia and Walla Walla counties. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-236, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-238 Exemption from burning permit requirements—Parts of Cowlitz County. [Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-238, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-238, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-240 Exemption from burning permit requirements—Parts of Snohomish County. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-240, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-242 Exemption from burning permit requirements—Parts of Skagit County. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-242, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-244 Exemption from burning permit requirements—Parts of Pacific and Grays Harbor counties. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-244, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

332-24-250 Permanent closure of extra fire hazard regions—Portions of Clark and Skamania counties. [Docket 242, § 1, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-260 Permanent closure of extra fire hazard regions—Gates, display of signs. [Docket 242, § 2, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-270 Permanent closure of extra fire hazard regions—Delegation of authority to issue notices. [Docket 242, § 3, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-280 Permanent closure of extra fire hazard regions—Procedure for giving notice. [Docket 242, § 4, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-290 Permanent closure of extra fire hazard regions—Description of closed region. [Docket 242, § 5, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-300 Permanent closure of extra fire hazard regions—Closed region—Gifford Pinchot National Forest. [Docket 242, § 6, filed 9/9/66.] Repealed by 83-10-036 (Order 396), filed 4/29/83, effective 6/1/83. Statutory Authority: RCW 76.04.150.

332-24-310 Rules requiring use of approved spark arresters on railroad locomotives. [Order 30, § 332-24-310, filed 8/7/70, 8/11/70, 8/19/70.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-320 Definitions. [Order 30, § 332-24-320, filed 8/7/70, 8/11/70, 8/19/70.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-330 General rules. [Order 30, § 332-24-330, filed 8/7/70, 8/11/70, 8/19/70.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-340 Penalties. [Order 30, § 332-24-340, filed 8/7/70, 8/11/70, 8/19/70.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-350 Extension of time for removal of distressed timber. [Order 70, § 332-24-350, filed 10/21/70.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-360 Promulgation. [Order 274, § 332-24-360, filed 4/8/77; Order 126, § 332-24-360, filed 12/19/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-370 Definitions. [Order 274, § 332-24-370, filed 4/8/77; Order 126, § 332-24-370, filed 12/19/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-380 Extreme fire hazard requiring abatement. [Order 274, § 332-24-380, filed 4/8/77; Order 126, § 332-24-380, filed 12/19/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-385 Extreme fire hazard requiring isolation or reduction. [Order 274, § 332-24-385, filed 4/8/77.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-387 Responsibility. [Order 274, § 332-24-387, filed 4/8/77.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-390 Preexisting hazards. [Order 274, § 332-24-390, filed 4/8/77; Order 126, § 332-24-390, filed 12/19/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-395 Compliance. [Order 274, § 332-24-395, filed 4/8/77.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-400 Approved abatement. [Order 126, § 332-24-400, filed 12/19/72.] Repealed by Order 274, filed 4/8/77.

332-24-410 Recovery of costs. [Order 274, § 332-24-410, filed 4/8/77; Order 126, § 332-24-410, filed 12/19/72.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-412 Approved isolation, reduction or abatement. [Order 274, § 332-24-412, filed 4/8/77.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-415 Dumping mill waste, forest debris. [Order 169, § 332-24-400 (codified as WAC 332-24-415), filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-418 Definitions. [Order 169, § 332-24-410 (codified as WAC 332-24-418), filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-420 Creation of fire hazard—Dumping. [Order 169, § 322-24-420, filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-430 Fire hazard dumping permits. [Order 169, § 332-24-430, filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-440 Illegal dumping—Enforcement penalties. [Order 169, § 332-24-440, filed 8/7/73.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-500 Forest fire protection and special forest fire suppression account minimum assessment refund procedure. [Statu-

tory Authority: RCW 76.04.020. 83-23-105 (Order 405), § 332-24-500, filed 11/23/83; 83-01-099 (Order 388), § 332-24-500, filed 12/20/82.] Repealed by 87-11-005 (Order 504), filed 5/8/87. Statutory Authority: RCW 76.04.015.

332-24-656 Preexisting hazards. [Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-656, filed 5/8/87.] Repealed by 92-14-096 (Order 599), filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660.

ADMINISTRATION

WAC 332-24-005 Definitions. Items defined herein have reference to chapter 76.04 RCW and all other provisions of law relating to forest protection and have the meanings indicated unless the context clearly requires otherwise.

(1) "Abatement" means the elimination of additional fire hazard by burning, physical removal, or other means.

(2) "Additional fire hazard" means additional fire hazard as defined in RCW 76.04.005.

(3) "Adze eye hoe" means a serviceable forest fire fighting hoe with a blade width of at least five and three-quarters inches and a rectangular eye. The blade shall be sharpened, solid, and smooth. The handle shall be hung solid with no more than three-quarters of an inch nor less than one-eighth of an inch extending beyond the head, smooth, aligned, and at least thirty-two inches long.

(4) "Approved exhaust system" means a well-mounted exhaust system free from leaks and equipped with spark arrester(s) rated and accepted under United States Department of Agriculture Forest Service current standards.

(a) Turbochargers qualify as an approved exhaust system when all gases pass through the turbine wheel. The turbine must be turning at all times, and there must be no exhaust bypasses. A straight mechanical-driven supercharger does not qualify as an approved exhaust system in lieu of an approved spark arrester.

(b) Passenger vehicles and trucks may be equipped with an adequately baffled muffler in lieu of a spark arrester.

(c) General purpose spark arresters for use on equipment, vehicles, and motorcycles operating on forest land must meet the performance levels set forth in the Society of Automotive Engineers (SAE) Recommended Practice SAE J350, "Requirements of Single Position Application General Purpose Arresters." The spark arrester shall be permanently marked with the model number and the manufacturer's identification or trademark. When the inlet and outlet of an arrester are not easily identified, they must be marked. Arresters on mobile equipment shall not be mounted more than forty-five degrees from the qualified position.

(d) Portable power saws purchased after June 30, 1977, and used on forest land, must meet the performance levels set forth in the Society of Automotive Engineers (SAE) Recommended Practice SAE J335b, "Multi-Positioned Small Engine Exhaust Fire Ignition Suppression." Requirements to obtain the SAE J335b specifications are as follows:

(i) The spark arrester shall be designed to retain or destroy ninety percent of the carbon particles having a major diameter greater than 0.023 inches (0.584mm).

(ii) The exhaust system shall be designed so that the exposed surface temperature shall not exceed five hundred fifty degrees Fahrenheit (288 degrees Centigrade) where it may come in direct contact with forest fuels.

(iii) The exhaust system shall be designed so that the exhaust gas temperature shall not exceed four hundred seventy-five degrees Fahrenheit (246 degrees Centigrade) where the exhaust flow may strike forest fuels.

(iv) The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.

(v) The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as a part of routine maintenance shall have a service life of not less than fifty hours. Cleaning of parts shall not be required more frequently than once for each eight hours of operation. The spark arrester shall be so designed that it may be readily inspected and cleaned.

(vi) Portable power saws will be deemed to be in compliance with SAE J335b requirements if they are certified by the United States Department of Agriculture, Forest Service, and the San Dimas Equipment Development Center.

(e) Portable power saws which were purchased prior to June 30, 1977, and which do not meet the Society of Automotive Engineers Standards, must meet the following requirements:

(i) The escape outlet of the spark arrester shall be at an angle of at least forty-five degrees from a line parallel to the bar;

(ii) The configuration of spark arrester shall be such that it will not collect sawdust no matter in what position the saw is operated;

(iii) Spark arrester shall be designed and made of material that will not allow shell or exhaust temperature to exceed eight hundred fifty degrees Fahrenheit;

(iv) The arrester shall have a screen with a maximum opening size of 0.023 inches (0.584mm.);

(v) The arrester shall be capable of operating, under normal conditions, a minimum of eight hours before cleaning is needed;

(vi) The screen shall carry a manufacturer's warranty of a minimum of fifty-hour life when installed and maintained in accordance with the manufacturer's recommendation;

(vii) The arrester shall be of good manufacture and made so that the arrester housing and screen are close fitting;

(viii) The arrester shall be at least ninety percent efficient in the destruction, retention or attrition of carbon particles over 0.023 inches (0.584mm.);

(ix) Efficiency is to be measured as described in Power Saw Manufacturer's Association Standard, Number S365;

(x) Construction of the arrester shall permit easy removal and replacement of the screen for field inspection and cleaning.

(f) Multipositioned engine powered tools, other than power saws, used on forest land must meet the performance levels set forth in the Society of Automotive Engineers (SAE) Recommended Practice J335b, "Multi-Positioned Small Engine Exhaust Fire Ignition Suppression."

(g) Locomotive spark arresters for use on logging, private or common carrier railroads operating on or through forest land must meet the performance levels set forth in the Association of American Railroads (AAR) Recommended Practice, "Standard for Spark Arresters for Non-Turbo Charged Diesel Engines Used in Railroad Locomotives."

(5) "Axe" means a serviceable, double-bitted, swamping axe or single-bitted axe of at least a three-pound head and thirty-two inch handle. The blades shall be sharpened, solid and smooth. The handle shall be hung solid, smooth and straight.

(6) "Certified electrical fence controller" means an electrical fence controller that meets the standards for fire safety developed by Underwriters Laboratories (UL) and indicates approval by bearing the UL label on the controller.

(7) "Currently with the logging" and "current with the felling of live timber, or with the current logging operation" means during the logging operation or associated activities on any landing, setting or similar part of the operation.

(8) "Debris disposal fire" means an outdoor fire for the elimination of a fire hazard and for the purpose of clean-up of natural vegetation and residue of a natural character such as leaves, clippings, prunings, trees, stumps, brush, shrubbery, and wood so long as it has not been treated by an application of prohibited material or substance in a pile no larger than that allowed in WAC 332-24-211.

(9) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(10) "Dump" includes, without limitation, dumping, depositing, or placing.

(11) "Electrical fence controller" includes any controller, equipment, appliance, device, or apparatus used as an electrical fence controller, energizer, or pulsator which uses or conveys an electrical current.

(12) "Fire extinguisher" means, unless otherwise stated, a fully charged and operational chemical fire extinguisher rated by underwriters' laboratory or factory mutual, appropriately mounted in either a vertical or horizontal position, and located so as to be readily accessible to the operator. When two fire extinguishers are required, they are to be appropriately mounted and located so that one is readily accessible to the operator and the other is separate from the operator and readily accessible to other personnel. The fire extinguisher shall be equipped with a gauge to determine the level of charge present to propel the chemical from the extinguisher; however fire extinguishers required for use with portable power saws are not required to be equipped with a gauge to determine the level of charge.

(13) "Fire hazard" means the accumulation of combustible materials in such a condition as to be readily ignited and in such a quantity as to create a hazard from fire to nearby structures, forest areas, life and property.

(14) "Fire tool box" means a compartment of sound construction with a waterproof lid, provided with hinges and hasps and so arranged that the box can be properly sealed and the contents kept dry. The box shall be red in color and marked "fire tools" in white or black letters at least three inches high. The fire tool box shall contain a minimum of:

(a) Two axes or pulaskis;

(b) Three adze eye hoes;

(c) Three shovels.

(15) "Firewatch" means at least one competent person to be at the site(s) for one hour following the operation of spark-emitting equipment on class 3L days or above, or as determined by the department based on the national fire danger rating system and other fire danger conditions. The firewatch shall be vigilant and so located or positioned to be able to detect within five minutes fires which may originate at the site(s) of the equipment operation. The firewatch shall report a fire to the responsible protection agency within fifteen minutes of detection.

(16) "Fixed-position machine" means any machine used for any portion or phase of harvesting, thinning, site preparation, land clearing, road, railroad and utility right of way clearing or maintenance, mineral or natural resources extraction, or other operation that performs its primary function from a fixed-position. This definition applies even though said machine is capable of moving under its own power to a different fixed position.

(17) "Forest debris" means forest debris as defined in RCW 76.04.005.

(18) "Forest land" means forest land as defined in RCW 76.04.005.

(19) "Isolation" means the division or separation of an additional fire hazard into compartments by a constructed barrier of at least one hundred feet in width at its narrowest point. The constructed barrier must be free and clear of forest debris as defined in RCW 76.04.005 and must be approved, in writing, by the department.

(20) "Mill waste" means waste of all kinds from forest products, including, but not limited to, sawdust, bark, chips, slabs, and cuttings from lumber or timber.

(21) "Operation" means the use of equipment, tools, and supporting activities on or adjacent to forest land that may cause a forest fire to start. Such activities may include, but are not limited to, any phase of harvesting, thinning, site preparation, land clearing, road, railroad, and utility right of way clearing and maintenance, and mineral or natural resource extraction. The operating period shall be that time period when the activity is taking place and includes that time when a firewatch would be required to be in attendance.

(22) "Outdoor fire" means the combustion of material in the open, or in a container, with no provisions for the control of such combustion or the control of the emissions from the combustion products.

(23) "Person" shall mean any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(24) "Prohibited material or substance" includes rubber products, plastics, asphalt, garbage, dead animals, petroleum products, paints, or any similar materials that emit dense smoke or create offensive odors when burned, pursuant to RCW 70.94.775(1).

(25) "Pulaski" means a serviceable axe and hoe combination tool with not less than a three and one-half pound head and thirty-two inch handle. The blades shall be at least two and one-half inches wide, sharpened, solid and smooth. The handle shall be hung solid, smooth and straight.

(26) "Pump truck or pump trailer" means:

(a) A serviceable truck or trailer which must be able to perform its functions efficiently and must be equipped with a water tank of not less than a three hundred gallon capacity, filled with water. The complete pump truck or pump trailer shall be kept ready for instant use for suppressing forest fires. If a trailer is used, it shall be equipped with a hitch to facilitate prompt moving. A serviceable tow vehicle shall be immediately available for attachment to the trailer. The pump truck, or pump trailer with its tow vehicle, must be available throughout the operating and watchperson periods.

(b) The pump may be a portable pump or suitable power take-off pump. It shall be plumbed with a bypass or pressure relief valve. The pump shall develop, at pump level, pressure sufficient to discharge a minimum of twenty gallons per minute, using a one-quarter inch nozzle tip through a fifty foot length of one inch or one and one-half inch rubber-lined hose.

(c) The pump truck or pump trailer shall be equipped with the following:

(i) A minimum of five hundred feet of one or one and one-half inch cotton or synthetic jacket hose;

(ii) A fully stocked fire tool box.

(d) The tank shall be plumbed so that water may be withdrawn by one person by gravity feed. This outlet shall be adapted to accept the hose used with the pump truck or pump trailer. The outlet shall be located for easy filling of pump cans.

(e) The pump truck or pump trailer must be equipped with fuel, appropriate tools, accessories and fittings to perform its functions for a continuous period of four hours. A recommended list of tools, fittings and accessories may be obtained from the department.

(27) "Recreational fire" means an outdoor fire for the purpose of sport, pastime or refreshment, such as camp fires, bonfires, cooking fires, etc., in a hand-built pile no larger than four feet in diameter and not associated with any debris disposal activities related to fire hazard elimination or yard and garden refuse clean-up.

(28) "Reduction" means the elimination of that amount of additional fire hazard necessary to produce a remaining average volume of forest debris no greater than nine tons per acre of material three inches in diameter and less.

(29) "Shovel" means a serviceable, long-handled or "D"-handled, round-point shovel of at least "0" size with a sharpened, solid and smooth blade. The handle on the shovel shall be hung solid, smooth and straight.

(30) "Snag" means a standing dead conifer tree over twenty-five feet in height and sixteen inches and over in diameter, measured at a point four and one-half feet above the average ground level at the base.

(31) "Tractor or other mobile machine" means any machine that moves under its own power when performing any portion or phase of harvesting, thinning, site preparation, land clearing, road, railroad and utility right of way clearing or maintenance, mineral or natural resource extraction, or other operation. This definition includes any machine, whether crawler or wheel-type, whether such machine be engaged in yarding or loading, or in some other function during the operation.

(32) "Uncertified electrical fence controller" includes all electrical fence controllers that do not meet the standards for fire safety developed by Underwriters Laboratories (UL) and does not have the UL label on the controller.

[Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-005, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-005, filed 5/8/87.]

WAC 332-24-015 Invalidity of part of chapter not to affect remainder. If any provisions of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-015, filed 5/8/87.]

PERMITS

WAC 332-24-201 Burning permit program—Requirements and exceptions. Under authority granted in RCW 76.04.015 and 76.04.205, the following regulation is hereby promulgated:

(1) The department is responsible, by law, for the granting of burning permits for burning on lands it protects; and

(2) The department administers the protection of air quality as provided in chapter 70.94 RCW resulting from burning on lands under its protection; and

(3) The department has determined that the effects of such burning on life, property and air quality are of year-round effect; therefore

(4) Throughout the year, outdoor fire is prohibited on lands protected by the department where forest protection assessment is being, or is subject to being, assessed unless:

(a) A written burning permit is obtained from the department and the requirements of WAC 332-24-205 and 332-24-221 are followed; or

(b) Burning meets the regulations outlined in WAC 332-24-205 and 332-24-211.

(5) This chapter applies to all burning on lands protected by the department. It does not apply to agricultural burning as defined in WAC 173-425-030(1) nor to open burning as defined in WAC 173-425-030(2).

[Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-201, filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-201, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-201, filed 5/8/87.]

WAC 332-24-205 General rules—Minimum requirements for all burning. The following rules apply to all burning regulated by the department:

(1) The department reserves the right to restrict, regulate, refuse, revoke or postpone outdoor fires under RCW 76.04.205 and 76.04.315, and chapter 70.94 RCW due to adverse fire weather or to prevent restriction of visibility, excessive air pollution or a nuisance.

(2) Burning shall not be allowed within nonattainment areas of the state as established by Washington department of ecology for particulate matter ten microns or less or carbon monoxide, except for:

(a) Fires for improving and maintaining fire dependent ecosystems; or

(b) Fires for training wildland fire fighters; or

(c) Fires set for a defined research project; or

(d) Military training exercises; or

(e) The exclusive purpose of managing storm or flood-related debris; or

(f) Where exempted by local or state air pollution control agencies.

(3) Burning shall not be allowed inside urban growth areas as designated under growth management plans, or in cities of greater than ten thousand population as follows:

(a) In urban growth areas where reasonable alternatives exist.

(b) In cities with a population of ten thousand or more as established by the office of financial management:

(i) That exceed or threaten to exceed federal or state ambient air quality standards; and

(ii) Where reasonable alternatives to outdoor burning exist, in accordance with WAC 173-425-090.

(c) After December 31, 2000, burning shall not be allowed in urban growth areas or cities with a population of ten thousand or more.

(4) No fires shall be ignited when:

(a) The department of ecology has declared an air pollution episode for the geographic area pursuant to chapter 173-435 WAC; or

(b) The department of ecology or a local air pollution control authority has declared impaired air quality for the geographic area in which the burning is to be done.

(5) A person responsible for a burn at the time an episode or impaired air quality is called pursuant to chapter 173-425 WAC, shall extinguish the fire by:

(a) Withholding fuel from the burn;

(b) Allowing the fire to burn down; and

(c) Aggressively putting out the fire until there is no visible smoke, unless otherwise allowed by the department.

(6) Prior to lighting, the person doing the burning must telephone the department, and obtain any special instructions for the day and location of the proposed burn. Those instructions thereupon become part of the conditions of burning.

(7) The fire must not include rubber products, plastic products, asphalt, garbage, dead animals, petroleum products, paints, or any similar prohibited materials that emit dense smoke or create offensive odors when burned, pursuant to RCW 70.94.775(1).

(8) If the fire creates a nuisance from smoke or flying ash, it must be extinguished. For purposes of this section, a nuisance exists when emissions from any open fire cause physical discomfort or health problems to people residing in the vicinity of the burning or physical damage to property.

(9) Burning within the department's fire protection areas shall not:

(a) Cause visibility to be obscured on public roads and highways by the smoke from such fires; or

(b) Endanger life or property through negligent spread of fire or pollutants.

(10) A person capable of extinguishing the fire must attend the fire at all times and the fire must be completely extinguished before being left unattended.

(11) No fires are to be within fifty feet of structures, or within five hundred feet of forest slash without a written burning permit.

(12) The landowner or landowner's designated representative's written permission must be obtained before kindling a fire on the land of another.

(13) The department reserves the authority to provide waivers, exceptions, and/or to impose additional requirements through the use of written burning permits and the smoke management plan.

[Statutory Authority: RCW 76.04.015, 76.04.205, 70.94.660, and 70.94.743. 98-11-047, § 332-24-205, filed 5/18/98, effective 6/18/98. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-205, filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-205, filed 5/8/87.]

WAC 332-24-211 Specific rules for small fires not requiring a written burning permit. In addition to WAC 332-24-205, the following rules shall apply to burning regulated by the department that does not require a written burning permit. A written burning permit is not required from the department under the following conditions:

(1) In certain geographic areas of the state as designated by the department in subsection (3) of this section and when the requirements of subsections (4), (5), and (6) of this section are met; or

(2) When the fire is:

(a) Contained within a campfire pit, approved by the department, located in a state, county, municipal, or other campground;

(b) Contained within a camp stove or barbecue;

(c) A hand-built pile no larger than four feet in diameter that is being used exclusively for recreational purposes; and

(d) Situated on bare soil, gravel bars, beaches, green field, or other similar areas free of flammable material for a sufficient distance adequate to prevent the escape of fires.

(3) A fire that does not require a written permit has established size limitations based on time of year and the county within which the burning occurs.

(a) From July 1 to October 15 individual pile size in all counties shall be limited to no larger than four feet, except pile size in Clallam and Jefferson counties is limited to ten feet.

(b) From October 16 through June 30 individual pile size in all counties is limited to ten feet; except pile size is limited to four feet in Island, King, Kitsap, Mason, Pierce, San Juan, and Spokane counties.

(4) A serviceable shovel and a minimum of five gallons of water must be within the immediate vicinity of the fire. A bucket is acceptable if the outdoor fire is adjacent to an accessible body of water. A charged garden hose or other adequate water supply may be substituted for the five gallon water requirement.

(5) Only one pile may be burned at any one time and each pile must be extinguished before lighting another.

(6) Burning must be done during periods of calm to very light winds. Burning when wind will scatter loose flammable materials, such as dry leaves and clippings, is prohibited.

[Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-211, filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-211, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-211, filed 5/8/87.]

WAC 332-24-217 Burning permit requirements—Penalty. Failure to comply with the rules in chapter 332-24 WAC voids permission to burn. Any person burning without complying with chapter 332-24 WAC is in violation of RCW 76.04.205 and chapter 70.94 RCW. Convictions or bail forfeitures in connection with illegal burning under chapter 332-24 WAC may result in refusal to issue further permits for a two-year period from the date of the illegal burning. In addition to any other fines and penalties that may be imposed, the department may charge and recover costs from the person responsible for any response to control or extinguish an illegal fire caused in part or in whole by negligent acts or omissions.

[Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-217, filed 6/30/92, effective 7/31/92.]

WAC 332-24-221 Specific rules for burning that requires a written burning permit. Persons not able to meet the requirements of WAC 332-24-205 and 332-24-211 must apply for a written burning permit through the department. In addition to the rules outlined in WAC 332-24-205, the following are additional requirements for written permits:

(1) Written burning permits will be in effect for one year from the validation date, unless suspended or revoked.

(2) Fees for written burning permits will be charged and collected pursuant to chapter 70.94 RCW and shall be twenty-five dollars fifty cents for under one hundred tons of consumable debris; and for burns one hundred tons of consumable debris and greater as follows:

Consumable Debris			Fee schedule
100	-	500 tons	$127
501	-	1,000 tons	391
1,001	-	1,500 tons	651
1,501	-	2,000 tons	914
2,001	-	2,500 tons	1,175
2,501	-	3,000 tons	1,438
3,001	-	3,500 tons	1,697
3,501	-	4,000 tons	1,959
4,001	-	4,500 tons	2,222
4,501	-	5,000 tons	2,483
5,001	-	5,500 tons	2,746
5,501	-	6,000 tons	3,007
6,001	-	6,500 tons	3,271
6,501	-	7,000 tons	3,532
7,001	-	7,500 tons	3,794
7,501	-	8,000 tons	4,056
8,001	-	8,500 tons	4,318
8,501	-	9,000 tons	4,580
9,001	-	9,500 tons	4,843
9,501	-	10,000 tons	5,102
10,001	+	tons	5,365

For purposes of this section, consumable debris is the amount of debris that the department determines will be consumed by the proposed burning.

(3) Written burning permits are not considered valid unless all of the following conditions apply:

(a) The written permit has been signed by the applicant agreeing to follow all requirements of chapter 332-24 WAC, the smoke management plan in effect at the time of the burning, and any additional terms and conditions specified by the department in writing; and

(b) The required permit fee has been secured or paid according to approved department procedures; and

(c) The person doing the burning has the permit in possession while burning and is complying with all terms and conditions of such permit, the smoke management plan in effect at the time of the burning, and all applicable portions of chapter 332-24 WAC.

(4) Permits are written only for the burn site and fuel quantity that is presented at the time of the inspection. Addition of fuel, or changing the burn site after the site inspection has been made, is prohibited unless a new inspection is made and an added permit fee is paid, if required.

[Statutory Authority: RCW 70.94.660 and 76.04.205. 99-12-085, § 332-24-221, filed 6/1/99, effective 7/2/99; 98-13-068, § 332-24-221, filed 6/15/98, effective 8/1/98; 97-12-033 (Order 640), § 332-24-221, filed 5/30/97, effective 7/1/97; 96-12-020, § 332-24-221, filed 5/29/96, effective 7/1/96. Statutory Authority: RCW 70.94.660. 95-12-023 (Order 629), § 332-24-221, filed 5/31/95, effective 7/1/95; 94-14-063 (Order 619), § 332-24-221, filed 7/1/94, effective 8/1/94. Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-221, filed 6/30/92, effective 7/31/92. Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-221, filed 5/8/87.]

WAC 332-24-261 Dumping mill waste, forest debris—Creation of a fire hazard—Permits. (1) Forest debris or mill waste dumped in the following manner on or near forest land shall constitute a forest fire hazard and require a dumping permit:

(a) Piles of fifty cubic yards or more; or

(b) Two or more piles totaling fifty cubic yards or more, less than three hundred feet apart; or

(c) A pile less than three hundred feet from a pile placed by another where such piles would total fifty cubic yards or more; or

(d) When dumped adjacent to piles of fifty cubic yards or more which were in existence before August 9, 1971; or

(e) When dumped in smaller quantities or greater distances than above when such dumpings are likely to support, intensify or further spread the fire, thereby threatening forest land and/or endangering life or property; however forest debris accumulated on forest land from logging or silvicultural activities on the land on which such activities took place, or activities regulated by RCW 76.04.650, shall not be subject to the permit requirement of this section, except when forest debris accumulated on land clearing or right of way projects subject to RCW 76.04.650 is taken away from such areas and dumped.

(2) No person shall dump or cause to be dumped a forest fire hazard on or threatening forest land without first obtaining a written permit from the department.

(a) Any person having legal authority to dump mill waste from forest products or forest debris, on the described property, shall make application to the department or authorized employees for a permit to do so. The application shall state and include:

(i) The location;

(ii) The approximate quantity to be dumped;

(iii) A description of the material to be dumped;

(iv) A map illustrating the proposed dump site;

(v) The name of the person by whom the dumping is to be done.

(b) Upon receipt of an application, the department will inspect the area described in the application. The department, in issuing the permit, may impose conditions in such permit to prevent the creation of a forest fire hazard.

(c) In situations as outlined in subsection (1)(e) of this section, the department may notify the appropriate persons, and such person or persons shall be required to obtain a permit for the continued existence of the dumping of such fire hazard. This permit is required to ensure that such dumping does not create a forest fire hazard and outlines required terms and conditions to eliminate or abate any forest fire hazard that may be created by dumping.

(d) A dumping permit shall be effective only under the conditions and for the period stated therein. The department shall have the authority to rescind a permit upon failure to comply with any of the conditions or terms.

(3) Any person who dumps such mill waste or forest debris, without a permit or in violation of a permit, is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-261, filed 5/8/87.]

WAC 332-24-271 Fires for improving and maintaining fire dependent ecosystems. (1) All burning to improve and maintain fire dependent ecosystems within Conservation Areas and Natural Area Preserves shall be accomplished under a burning plan that has been approved by the department's land and water conservation division and fire control division managers. The burning plan must be a part of a total management plan approved by the land and water conservation division.

(2) Burning for this purpose may be allowed inside nonattainment areas, or urban growth areas.

(3) Burning for this purpose shall not be allowed during periods of air pollution episodes or air quality impairment called under chapter 173-425 WAC.

[Statutory Authority: RCW 76.04.015, 76.04.205 and 70.94.660. 92-14-096 (Order 599), § 332-24-271, filed 6/30/92, effective 7/31/92.]

CLOSURE/SUSPENSIONS

WAC 332-24-301 Industrial restrictions. (1) When in the opinion of the regional manager, for the department's administrative region, weather conditions arise which present a hazard to lands protected by the department, whereby life and property may be endangered, the regional manager, through the authority granted the department in RCW 76.04.015 and 76.04.325, may designate industrial precaution levels thereby regulating logging, land clearing or other industrial operations which may cause a fire to start on or adjacent to forest lands. The restrictions shall be for periods designated and shall only affect those portions of the state under the administrative jurisdiction of the area manager.

(2) In making a decision as to when restrictions or shutdowns should occur, the area manager shall utilize available information as to current and projected fire danger, current and projected weather, current fire activity and available resources for fire suppression.

(3) All persons performing logging, land clearing or other operations which may cause a fire to start on or adjacent to forest lands shall comply with the restrictions described in the designated industrial precaution level.

(a) The industrial fire precaution levels shall be:

(i) Level 1. Closed season - Fire precaution requirements are in effect. A fire watch/security is required at this and all higher levels unless otherwise waived.

(ii) Level 2. Partial hootowl - The following may operate only between the hours of 8 p.m. and 1 p.m. local time:

- Power saws except at loading sites;
- Cable yarding;
- Blasting;
- Welding or cutting of metal.

(iii) Level 3. Partial shutdown - The following are prohibited except as indicated:

- Cable yarding - except that gravity operated logging systems employing nonmotorized carriages or approved motorized carriages may operate between 8 p.m. and 1 p.m. when all block and moving lines, except for the line between the carriage and the chokers, are suspended ten feet above the ground;
- Power saws - except power saws may be used at loading sites and on tractor/skidder operations between the hours of 8 p.m. and 1 p.m. local time.

In addition, the following are permitted to operate between the hours of 8 p.m. and 1 p.m. local time:

- Tractor, skidder, feller-buncher, forwarder, or shovel logging operations where tractors, skidders, or other equipment with a blade capable of constructing fireline, are immediately available to quickly reach and effectively attack a fire start;
- Mechanized loading and hauling of any product or material;
- Blasting;
- Welding or cutting of metal.

(iv) Level 4. General shutdown - All operations are prohibited.

(b) The following definitions shall apply to these industrial fire precaution levels:

(i) "Loading sites" means a place where any product or material, including but not limited to logs, firewood, slash, soil, rock, poles, posts, etc., is placed in or upon a truck or other vehicle.

(ii) "Cable yarding systems" means a yarding system employing cables and winches in a fixed position.

(iii) "Approved motorized carriages" means a cable yarding system employing a motorized carriage with two fire extinguishers, each with at least a 5 BC rating, mounted securely on opposite sides of the carriage, an emergency motor cutoff, and an approved exhaust system.

(iv) "Low hazard area" means any area where the department has determined the combination of elements reduces the probability of fire starting and/or spreading.

(v) "Closed season" is that season of the year when a fire hazard exists as declared by the department or other responsible agency.

(c) A written waiver may be issued by the department for fire-safe activities in low-hazard areas.

(d) Where hauling involves transit through more than one shutdown/regulated use area, the precaution level at the woods loading site shall govern the level of haul restriction, unless otherwise prohibited by other than the industrial precaution level system.

[Statutory Authority: RCW 76.04.015. 04-13-025 (Order 712), § 332-24-301, filed 6/8/04, effective 7/9/04. Statutory Authority: RCW 76.04.015 (4)(6). 96-21-094, § 332-24-301, filed 10/18/96, effective 11/18/96. Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-301, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-301, filed 5/8/87.]

FIRE PROTECTION REGULATIONS

WAC 332-24-401 Felling of snags. (1) Snags within areas of extreme fire hazard requiring abatement, as defined by WAC 332-24-005(28), shall be felled concurrently with the logging operation, unless:

(a) Such snag contains a visible nest of a species of wildlife designated by the United States Fish and Wildlife Service as threatened or endangered; or

(b) The department, upon written request of the landowner, determines, in writing, that such snag does not represent a substantial deterrent to effective fire control action.

(2) The department may designate, in writing, that additional snags be felled concurrently with the logging operation if, in the department's opinion, they represent a substantial deterrent to effective fire control action, unless such snag contains a visible nest of a threatened or endangered species.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-401, filed 5/8/87.]

WAC 332-24-405 Spark emitting equipment requirements. It shall be unlawful for anyone to operate, during the closed season as defined in RCW 76.04.005, any steam, internal combustion, electric engines or any other devices which emit sparks on any forest land or any other place where, in the opinion of the department, fire could be communicated to forest land without first complying with the following requirements for equipment or operations:

(1) Fixed-position machine:

(a) Two fire extinguishers, each of at least a 5 B C rating;

(b) An approved exhaust system;

(c) An appropriately mounted shovel.

(2) Logging railroad locomotive or common carrier locomotive:

(a) An approved exhaust system;

(b) Communications between the train and dispatcher for reporting fires to the responsible protection agency;

(c) Each locomotive shall be followed by a speeder patrol at such times, and in such locations, as designated by the department. The speeder patrol shall be equipped with:

(i) Two shovels;

(ii) One pulaski;

(iii) One adze eye hoe;

(iv) Two serviceable five gallon backpack pump cans filled with water;

(v) An approved exhaust system;

(vi) Communications between the speeder and the dispatcher for reporting fires to the responsible protection agency;

(vii) One fire extinguisher of at least a 5 B C rating.

(3) Passenger vehicle used for industrial or commercial operations:

(a) A fire extinguisher of at least a 5 B C rating;

(b) An approved exhaust system.

(4) Portable power saw:

(a) A chemical fire extinguisher of at least eight ounce capacity, fully charged and in good working order. The fire extinguisher shall be kept in the immediate possession of the operator;

(b) An approved exhaust system;

(c) A shovel, which shall be kept within two minutes round-trip of the operator;

(d) A firewatch.

(5) Spark-emitting engines used for purposes not specifically mentioned herein, which, in the opinion of the department, may cause a forest fire to start, unless equipped with:

(a) An approved exhaust system;

(b) One fire extinguisher of at least a 5 B C rating; however two-wheeled, three-wheeled, and four-wheeled motorcycles shall only be required to have an approved exhaust system.

(6) Tractor or mobile machine:

(a) One fire extinguisher of at least a 5 B C rating;

(b) An approved exhaust system;

(c) An appropriately mounted shovel.

(7) Truck or vehicle used for hauling:

(a) One fire extinguisher of at least a 5 B C rating;

(b) An approved exhaust system;

(c) An appropriately mounted shovel.

(8) During yarding, loading, milling, land clearing and right of way clearing, there must be kept at each landing, yarding tree, mill or other suitable place designated by the department, two serviceable five gallon backpack pump cans filled with water; however such operations in other areas of the state as may be designated by the department, in writing, must comply with the following additional requirements:

(a) A pump truck or pump trailer to be kept on the landing or within five minutes round-trip of the operation;

(b) A firewatch;

(c) Adequate facilities to report a fire to the responsible protection agency within fifteen minutes of detection.

(9) Balloon, skyline and other similar long-line or aerial logging systems with greater than a twelve hundred foot distance between the yarder and tailhold or tailblock unless complying with the following requirements:

(a) Two serviceable five gallon backpack pump cans filled with water at each landing, yarding tree or other suitable place designated by the department;

(b) Portable water supply available and equipped in order to supply water to the furthermost extremity of the operation within a maximum of ten minutes from the time of detection. The portable water supply shall contain a minimum of three hundred gallons of water and the complement of accessories and equipment identified in the definition of the pump truck or pump trailer. The portable water supply shall be equipped with a pump capable of delivering twenty gallons per minute, at sufficient pressure, using a one-quarter inch nozzle tip through a fifty foot length of one inch or one and one-half inch rubber-lined hose. The pump shall be plumbed with a bypass or pressure relief valve. The water

supply shall be located and outfitted for immediate use at the landing, and so that it may also be readily lifted and transported by use of the rigging system or cargo hook. Logging systems which are not capable of lifting the portable water supply and the fire tool kit in one lift must accomplish this in no more than three separate lifts. The fire tool kit shall be packaged and located for ready attachment to the rigging for delivery to the portable water supply while it is in operation. The fire tool kit shall contain:

(i) Three axes or pulaskis;

(ii) Six shovels;

(iii) Six adze eye hoes.

(c) Firewatch;

(d) Adequate facilities to report a fire to the responsible protection agency within fifteen minutes of detection.

(10) Each helicopter used for yarding, loading and land clearing or slash burning unless equipped and complying with the following:

(a) A VHF radio, maintained in operational use, at frequency 122.9 MHg;

(b) A portable water bucket of the following capacities, with necessary cargo hooks and tripping mechanism for dropping water on a fire, shall be located at the heliport serving the operation;

External Payload of Helicopter	Minimum Required Bucket Size
780 pounds and below	50 gallons
781 pounds - 1600 pounds	100 gallons
1601 pounds - 3900 pounds	200 gallons
3901 pounds and larger	300 gallons

(c) A water source of sufficient capacity readily accessible to allow the bucket to be filled three times without refilling the source. The water source must be located within five minutes round-trip flying time of every part of the operation;

(d) The following sized fire tool kit packaged for ready attachment to the cargo hook and located at the heliport serving the operation:

(i) Two axes or pulaskis;

(ii) Three shovels;

(iii) Three adze eye hoes.

(e) Two fire extinguishers of at least 20 B C rating shall be kept with refueling equipment. They shall be appropriately mounted, suitably marked and available for immediate use.

(11) Railroad track installation and maintenance:

(a) Crews - ten people or less:

(i) A pump truck or pump trailer as defined in WAC 332-24-005(24); however the water capacity of the pump truck or pump trailer may be less than three hundred gallons, but greater than one hundred fifty gallons when the unit is capable of producing department-approved high expansion foam;

(ii) One serviceable five gallon backpack pump can;

(iii) Communications between the crew and dispatcher for reporting fires to the responsible protection agency.

(b) Crews - greater than ten people:

(i) A pump truck or pump trailer as defined in WAC 332-24-005(24) that is also capable of producing department-approved high expansion foam;

(ii) A fire tool box containing a minimum of:

(A) Six pulaskis;

(B) Six adze eye hoes;

(C) Six shovels.

(iii) Communications between the crew and dispatchers for reporting fires to the responsible protection agency.

(c) Track welding, cutting and grinding shall be curtained by not less than a four foot high canvas type curtain, which completely encloses the operation and prevents the escapement of sparks from welding, cutting or grinding.

(12) Prior to beginning operations, all snags, stubs and dead trees over fifteen feet in height shall be cut within fifty feet of each fixed-position machine which will operate for two consecutive days or more in one position.

The ground shall be initially cleared of all flammable debris under four inches in diameter beneath and within ten feet of each fixed-position machine which will operate for two consecutive days or more in one position.

(13) The area around the tail, corner and haul back blocks must be kept clean of all flammable debris under four inches in diameter for a distance of six feet in all directions. Suitable flame-resistant blanket devices may be substituted for the clearing requirement when the six foot diameter area is covered. Each block must be equipped with one serviceable five gallon backpack pump can filled with water, one shovel and one pulaski. Operations with multiple blocks must have this complement of tools and water within one hundred feet of each block.

(14) It shall be the operator's responsibility to identify points of line rub on cable logging operations during the closed season. If line rub occurs, the operator shall do what is necessary to stop, alleviate or control the line rub in order to prevent fires at these points. Satisfactory means include, but are not limited to:

(a) Removal of the object which the line is rubbing on;

(b) Changing the logging system;

(c) Moving the cable location.

(15) The department may designate certain areas which are known to have rapid fluctuations of extreme fire weather and/or concentrations of additional hazards. Operators in such areas may be required to monitor the humidity and/or wind speed and maintain a daily log of such readings. Relative humidity readings and wind speed must be determined and recorded by instruments and methods approved by the department.

The department may further require the operator in such areas to restrict operations when, in the opinion of the department, the recorded readings or current conditions are such that if a fire starts in that area it would probably spread to conflagration proportions regardless of personnel and equipment available for initial fire suppression.

[Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-405, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-405, filed 5/8/87.]

WAC 332-24-409 Electrical fence controllers. Electrically caused fires present a hazard to the health and safety of the people of Washington, therefore:

(1) No person shall use or energize any uncertified electrical fence controller on any forest land in the state of Washington except during the months of November, December, January, February, and March: Provided, That this section shall not be construed to mean that the person may not have, establish, install, or erect such an uncertified electrical fence

controller which does not contain a current of electricity during the prohibited months.

(2) No person shall sell, offer for sale, or dispose of by gift or otherwise to any consumer or user in the state of Washington, any uncertified electrical fence controller without informing that consumer or user that the electrical fence controller is uncertified.

(3) Certified electrical fence controllers may be maintained, used, sold, offered for sale, disposed of by gift or otherwise without restriction.

(4) The responsibility of presenting sufficient evidence of certification such as the Underwriters Laboratories label, brand name, model number, etc., shall be upon the user.

(5) Failure to present sufficient evidence of certification such as Underwriters Laboratories label, brand name, model number, etc., at an inspection of the usage of electrical fence controllers during the months prohibited by subsection (1) of this section, shall be prima facie evidence of noncompliance with the provision of this regulation.

[Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-409, filed 9/24/91, effective 10/16/91.]

WAC 332-24-411 Substitution, reduction, or increase of requirements. (1) The department may accept serviceable equivalents to any of the requirements in WAC 332-24-405. Such substitutions must be made in writing by the department.

(2) The department may, by written permission, reduce the requirements set forth in WAC 332-24-405 whenever, in the opinion of the department, the operation is of such type or location and/or weather is such that all the requirements are not needed for the protection of life and property.

(3) The department may, in writing, require additional equipment, above the requirements of WAC 332-24-405 for fire protection in those areas known to have had rapid fluctuations of extreme fire weather and/or concentrations of additional hazards.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-411, filed 5/8/87.]

ASSESSMENTS, OBLIGATIONS, FUNDS

WAC 332-24-600 Forest fire protection and special forest fire suppression account minimum assessment refund procedure. This section implements the provisions of RCW 76.04.610 and 76.04.630, which provides that an owner of forest land owning two or more parcels, each containing less than fifty acres in a county, may obtain a refund of the assessments paid on all such parcels over one.

(1) The forest landowner must:

(a) Obtain a forest protection assessment refund form from any department or county treasurer office;

(b) Complete refund form per instructions on form;

(c) Pay taxes and assessments to county treasurer and obtain treasurer's signature on refund form to verify assessments have been paid in full;

(d) Mail refund form before December 31 of the year the assessments are due to: Department of Natural Resources, Fire Control Division, Olympia, WA 98504.

(2) The department's fire control division will complete the refund due the landowner and process for payment through the department's financial services' division. The financial services' division will prepare the refund check and send the check and a copy of the refund form to the landowner.

[Statutory Authority: RCW 76.04.015. 91-20-060 (Order 583), § 332-24-600, filed 9/24/91, effective 10/16/91; 87-11-005 (Order 504), § 332-24-600, filed 5/8/87.]

HAZARD ABATEMENT

WAC 332-24-650 Extreme fire hazard requiring abatement. A forest landowner shall be absolutely liable for fire suppression costs for any fire that occurs and abatement is required under the following conditions:

(1) Any additional fire hazard within a distance of one hundred feet from the closest edge of the running surface of any state or federal highway, county road or railroad;

(2) Any additional fire hazard within a distance of one hundred feet from the closest edge of the running surface of any other road, as hereinafter defined, that is generally open to and frequently used by the public during periods of fire danger. For the purpose of these rules and regulations, the term "other road" shall be defined as those roads owned or controlled by private individuals, partnerships or corporations, or by public agencies, including, without limitation, the department or the United States Forest Service, and which provide the principal access during periods of fire danger where normal use is seventy-five vehicles or more per week to geographic features of significant public interest and use such as lakes, streams, established viewpoints, lava tubes, ice caves, features of unique geological interest, recreational parks and developments or other facilities intended for frequent public use;

(3) Any additional fire hazard within a distance of two hundred feet, if required in writing by the department, and up to a maximum of five hundred feet, adjacent to public campgrounds, school grounds, other areas of frequent concentrated public use, buildings in use as residences (furnished and being occupied or available for immediate occupancy) and other buildings or structures valued at one thousand dollars or more, which are not owned by the owner of the land upon which such additional fire hazard exists;

(4) The department may identify other specific areas of additional fire hazard, with comparable high risk of ignition and/or a threat to life and property and, upon written notification, require abatement.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-650, filed 5/8/87.]

WAC 332-24-652 Extreme fire hazard—Eight hundred contiguous acres. (1) A forest landowner shall be absolutely liable for fire suppression costs for any fire that occurs within an extreme fire hazard created by eight hundred or more contiguous acres of additional fire hazard when:

(a) The additional fire hazard's origin is less than five years, except when:

(i) The material is fifty percent or more Douglas fir by volume, the time of origin shall be less than eight years; or

(ii) The material is fifty percent or more cedar by volume, the time of origin shall be less than twenty years.

(b) Its unisolated compartments comprise eight hundred acres or more regardless of ownership or logging pattern;

(c) Its composition comprises an average tonnage greater than nine tons per acre of material, three inches or less in diameter.

(2) The department may identify additional acres comprising eight hundred acres or more of additional fire hazard extending beyond these limitations of time, with comparable high hazard and/or a threat to life or property and, upon written notification, place absolute liability for fires with the forest landowner(s).

(3) Areas of additional fire hazard will be considered as one contiguous area, unless one of the following conditions are satisfied:

(a) The areas are separated by natural barriers of at least three hundred feet in width at their narrowest point. Natural barriers can include streams, ridge tops and/or areas not comprising an additional fire hazard;

(b) The areas are separated by a constructed barrier as provided in the definition of isolation;

(c) A combination of (a) and (b) of this subsection.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-652, filed 5/8/87.]

WAC 332-24-654 Extreme fire hazard—Liability—Responsibility. (1) Liability for the existence of an extreme hazard arises upon creation of the extreme hazard. No written notification by the department of its existence is required. Liability shall include any department suppression costs incurred during the act(s) of isolating, reducing or abating the extreme hazard.

(2) The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard requiring abatement, as defined in WAC 332-24-650, shall abate the extreme fire hazard. The obligation to abate shall extend equally to all acreages of the extreme fire hazard, regardless of the number of owner(s) and/or person(s) responsible for its existence. The liability for the existence of the extreme fire hazard continues until the extreme fire hazard is abated.

(3) The owner(s) and/or person(s) responsible for the existence of an extreme fire hazard, as defined in WAC 332-24-652, may isolate and/or reduce the extreme fire hazard to remove the absolute liability associated with its existence. The liability assumed for the existence of the extreme fire hazard shall extend equally to all acreages involved, regardless of owner(s) and/or person(s) responsible for its existence. Isolation, when used, must be maintained for a period of eight years from creation of the extreme fire hazard, unless the extreme fire hazard is otherwise eliminated prior to that time. Isolation and/or reduction may be performed in any manner consistent with existing statutes, these regulations or as approved in writing by the department.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-654, filed 5/8/87.]

WAC 332-24-658 Recovery of costs. The department may, following ten days' notice to the owner(s) and/or person(s) responsible for an extreme fire hazard that must be abated, summarily cause it to be abated, except that broadcast burning shall not be used by the department as an abatement procedure without prior written consent of all the owner(s) and/or person(s) responsible. This summary action may be taken ten days after notice as required by RCW 76.04.660. Obligations for recovery of costs incurred by the department shall be in accordance with RCW 76.04.660 and shall be prorated by the department to the owner(s) and/or person(s) responsible for the extreme fire hazard on the ratio of their acres of involvement to the total acres involved.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-658, filed 5/8/87.]

WAC 332-24-660 Approved isolation, reduction, or abatement—Relief of liability. The owner(s) and/or person(s) responsible for an extreme fire hazard may identify, in writing, the procedures, or the natural or other processes which were taken to abate, isolate or reduce the extreme fire hazard and request the department to declare, in writing, whether the area does or does not constitute an extreme hazard. Absence of such a request on the part of the owner(s) and/or person(s) responsible for an extreme fire hazard will not prejudice their defense in the event of a fire.

As an alternative, the owner(s) and/or person(s) responsible may implement a plan of increased protection, which has received prior written approval of the department, for the specific location.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-660, filed 5/8/87.]

WAC 332-24-700 Forest protection zone—Vashon and Maury islands. (1) It is determined that all forest land situated on Vashon and Maury Island are best protected by King County Fire Protection District 13. Therefore, the forest land on Vashon and Maury Island is removed from the department's forest protection zone and becomes the protection responsibility of the district.

(2) Forest land on Vashon and Maury Island will not be assessed under RCW 76.04.610 or 76.04.630.

[Statutory Authority: RCW 76.04.165. 90-15-061 (Order 570), § 332-24-700, filed 7/18/90, effective 8/18/90.]

WAC 332-24-710 Forest protection zone—Kitsap County. (1) It is determined that some forest lands within Kitsap County are best protected by fire protection districts. Therefore, the forest lands, situated within the following fire districts, are removed from the department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District 1. All forest lands, except state and federal owned forest lands within the legal description as follows: Township 25 North, Range 1 East W.M., Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 28, 29, 30; Township 25 North, Range 1 West W.M., Sections 1, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, and N 1/2 28, N 1/2 29, N 1/2 30; Township 25 North, Range 2 West W.M., Sections 25, 26, 27, 34, 35, 36; Township 26 North, Range 1 West W.M., Sections 24, 25, 31, 36; Township 26 North, Range 1 East, Section 31.

(b) Fire Protection District 2. All forest lands except state and federal owned forest lands within the legal description as follows: Township 24 North, Range 2 East W.M., Section 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15; Township 25 North, Range 2 East W.M., Section 2, 3, 4, 5, 7, 8, 9, 10, 11, 13, 14,

15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 26 North, Range 2 East W.M., Sections 26, 27, 28, 33, 34, 35.

(c) Fire Protection District 4. All forest lands except state, tribal, and federal owned forest lands within the legal description as follows: Township 26 North, Range 2 East W.M., Sections 4, 5, 8, 9, 16, 17, 20, 21, 28, 29, 32.

(d) Fire Protection District 7. All forest lands except state and federal owned forest lands within the legal description as follows: Township 22 North, Range 1 East W.M., Sections 1, 2, 3, 4, 5, 8, 9, 10, 11, 12; Township 22 North, Range, 2 East W.M., Sections 3, 4, 5, 6, 7, 8, 9, 10; Township 23 North, Range 1 East W.M., Sections 1, 2, 3, 4, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 23 North, Range 1 West W.M., Sections 2, 3, 10, 11, 12, 13, 14, 22; Township 23 North, Range 2 East W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 17, 18, 19, 20, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34; Township 24 North, Range 1 East W.M., Sections 3, 10, 15, 21, 22, 27, 28, 29, 31, 32, 33, 34, 35, 36; Township 24 North, Range, 1 West W.M., Sections 29, 31, 32, 33, 34, 35; Township 24 North, Range 2 East W.M., Sections 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36.

(e) Fire Protection District 10. All forest lands except state and federal owned forest lands within the legal description as follows: Township 26 North, Range 2 East W.M., Sections 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16; Township 26 North, Range 3 East W.M., Sections 6, 7, 18; Township 27, North Range 2 East W.M., Sections 14, 15, 16, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36.

(f) Fire Protection District 12. All forest lands except state and federal owned forest lands within the legal description as follows: Township 24 North, Range 1 East W.M., Sections 4, 5, 6, 7, 8, 16, 17, 20, 21; Township 24, North, Range 1 West W.M., Sections 1, 2, 3; Township 25 North, Range 1 East W.M., Sections 29, 30, 31, 32, 33; Township 25, North, Range 1 West W.M., Sections 25, 26, 27, 34, 35.

(g) Fire Protection District 14. All forest lands except state and federal owned forest lands within the legal description as follows: Township 27 North, Range 2 East W.M., Sections 2, 3, 10, 11; Township 28 North, Range 1 East W.M., Sections 12, 13; Township 28 North, Range 2 East W.M., Sections 7, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 34, 35, E 1/2 E 1/2 Sec. 28, E 1/2 E 1/2 Sec. 33.

(h) Fire Protection District 15. All forest lands except state and federal owned forest lands within the legal description as follows: Township 24 North, Range 1 East W.M., Sections 1, 2, 3, 10, 11, 12; Township 24 North, Range 2 East W.M., Sections 6, 7, 18; Township 25 North, Range 1 East W.M., Sections 1, 2, 3, 10, 11, 12, 13, 14, 15, 23, 24, 25, 26, 27, 28, 33, 34, 35, 36; Township 25 North, Range 2 East W.M., Sections 19, 30, 31.

(i) Fire Protection District 18. All forest lands except state and federal owned forest lands within the legal description as follows: Township 25 North, Range 2 East W.M., Section 6; Township 26 North, Range 1 East W.M., Sections 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36; Township 26 North, Range 2 East W.M., Sections 6, 7, 18, 19, 30, 31; Township 27 North, Range 1 East W.M., Sections 1, 12, 14, 22, 23, 26, 27, 28, 33, 34, 35, 36, and W 1/2 Section 13; Township 27 North, Range 2 East W.M., Sections 5, 6, W 1/2 and NE 1/4 Sec. 31, SE 1/4 SW 1/4 SE 1/4 Sec. 36.

(2) Forest lands removed from the forest protection zone will not be assessed under RCW 76.04.610 or 76.04.630

(3) The transfer of fire protection responsibility is effective January 1, 1994.

[Statutory Authority: RCW 76.04.165. 93-03-007 (Order 608), § 332-24-710, filed 1/8/93, effective 2/8/93.]

WAC 332-24-720 Forest protection zone—Pierce County. (1) It is determined that some forest lands within Pierce County are best protected by fire protection districts. Therefore, the forest lands, situated in the following fire protection districts, are removed from the department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District 6. All forest lands, except state and federal forest lands within the legal description as follows: Township 18 North, Range 3 East W.M., Sections 1, 2, 3, 4, 10, 11, 12, 13, 14, 23, 24, 45; Township 19 North, Range 3 East W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53; Township 19 North, Range 4 East W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, f19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 35, N 1/2 SW 1/4 of Section 36, Section 38; Township 20 North, Range 3 East W.M., Sections 11, 13, 14, 23, 24, 25, 26, 27, 31, 34, 35, 36, 39, 41; Township 20 North, Range 4 East W.M., Sections 19, 29, 30, 31, 32.

(b) Fire Protection District 18. All forest lands, except state and federal forest lands within the legal description as follows: Township 18 North, Range 4 East, W.M., NE 1/4, S 1/2 Section 1, 12; Township 18 North, Range 5 East, W.M., Sections 5, 6, 7, Section 8 West of Orville Road, Section 17 west of Orville Road; Township 19, Range 4 East, W.M., S 1/2 SE 1/4 Section 1, Sections 12, 13, 24, NE 1/4, E 1/2 NW 1/4, NE 1/4 NW 1/4, SE 1/4 Section 25, Section 26, SE 1/4 NE 1/4, E 1/2 SE 1/4 Section 36, Sections or Claim Numbers 37, 38; Township 19 North, Range 5 East, W.M., S 1/2 S 1/2 Section 6, N 1/2 NE 1/4, SW 1/4 NE 1/4, W 1/2 Section 7, W 1/2 Section 18, W 1/2 SE 1/4 West of Carbon River in Section 19, south of Carbon River in Section 30, Sections 31, 32, Sections or Claim Numbers 37, 38, 40.

(c) Fire Protection District 21. All forest lands, except state and federal forest lands within the legal description as follows: Township 17 North, Range 3 East, W.M., Sections 1, 2, 11, 12; Township 17 North, Range 4 East, W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15; Township 17 North, Range 5 East, W.M., Sections 4, 5, 6, 7; Township 18 North, Range 3 East, W.M., Sections 13, 14, 23, 24, 25, 26, 27, 34, 35, 36; Township 18 North, Range 4 East, W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36; Township 18 North, Range 5, East W.M., Sections 18, 19, 20, 29, 30, 31, 32, 33; Township 19 North, Range 4 East, W.M., Sections 28, 29, 30, 31, 32, 33, 34.

(d) Fire Protection District 22. All forest lands, except state and federal forest lands within the legal description as follows: Township 20 North, Range 5 East, W.M., S 1/2 S

1/2 SW 1/4 west of the top of the westerly bluff of the White River Gorge in Section 2, SW 1/4 NE 1/4, NW 1/4, S 1/2 Section 3, Sections 4, 5, E 1/2 Section 7, Sections 8, 9, 10, Section 11 west of the top of the westerly bluff of the White River Gorge, SW 1/4 SW 1/4 Section 13, Section 14 west of the top of the westerly bluff of the White River Gorge, Sections 15, 16, 17, NE 1/4, N 1/2 SE 1/4, SE 1/4 SE 1/4 Section 18, N 1/2, SE 1/4 SW 1/4, SE 1/4 Section 20, Sections 21, 22, 23, NW 1/4 NW 1/4, S 1/2 NW 1/4, SW 1/4 Section 24, and N 1/2 NE 1/4, N 1/2 NW 1/4 Section 29.

(e) Fire Protection District 24. All forest lands, except state and federal forest lands within the legal description as follows: Township 19 North, Range 5 East, W.M., Sections 3, 4, NE 1/4, E 1/2 SW 1/4, SW 1/4 SW 1/4 north of Rhodes Lake Road, SE 1/4 Section 5, Section 8 north of Rhodes Lake Road, E 1/2, NW 1/4 north of Rhodes Lake Road Section 9, Section 10, S 1/2 Section 11, North 1/2 Section 14.

(f) Fire Protection District 27. All forest lands, except state and federal forest lands on Anderson Island.

(2) Forest lands removed from the forest protections zone will not be assessed under RCW 76.04.610 or 76.04.-630.

(3) The exchange of fire protection responsibility involving Fire Protection District 21 will be effective January 1, 1994.

(4) The exchange of fire protection responsibility involving Fire Protection District 27 will be effective January 1, 1997.

(5) The exchange of fire protection responsibility involving Fire Protection Districts 6, 18, 22, and 24 will be effective January 1, 1998.

[Statutory Authority: RCW 76.04.165. 97-05-066, § 332-24-720, filed 2/19/97, effective 1/1/98; 96-03-003 (Order 632), § 332-24-720, filed 1/4/96, effective 1/1/97; 93-07-002 (Order 609), § 332-24-720, filed 3/4/93, effective 4/4/93.]

WAC 332-24-730 Forest protection zone—King County. (1) It is determined that some forest lands within King County are best protected by fire protection districts. Therefore, the forest lands, situated within the following fire protection districts, are removed from the department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District 10. All forest lands, except King County, state and federal forest lands, within the legal description as follows: Township 23 North, Range 5 East, W.M., the N 1/2 NW 1/4 and the SE 1/4 NW 1/4 of Section 1, the NW 1/4 and the S 1/2 of Sections 2, 3, 10, 11, 12, 13; Township 24 North, Range 5 East, W.M., Sections 13, 14, 23, 24, 25, 26, 27, 34, the NW 1/4 NW 1/4 and the SW 1/4 SW 1/4 of Section 35; Township 23 North, Range 6 East, W.M., E 3/4 of Sections 3, 6, 7, 8, 10, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 26, 27, 28, 29, 36; Township 24 North, Range 6 East, W.M., the S 1/2 NW 1/4 and the N 1/2 SW 1/4 of Section 1, the S 1/2 and the S 1/2 NW 1/4 of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26 north of Interstate 90, Section 27 north of Interstate 90, 28, the SE 1/4 and the S 1/2 SW 1/4 and the NE 1/4 SW 1/4 of Section 29, the N 1/2 NE 1/4 and the NE 1/4 NW 1/4 of Section 30, the N 1/4 E 1/2 of Sections 32, 33, 34; Township 25 North, Range 6 East W.M., Sections 26, 27, 28, 32, 33, 34, the N 1/2 NW 1/4 and the SW 1/4 NW 1/4 of Section 35; Township 26 North, Range 6 East, W.M., Sections 25, 26, 35, 36; Township 23 North, Range 7 East, W.M., Sections 3, 4, 10; Township 24 North, Range 7 East, W.M., Sections 18, 19, the S 1/2 of Sections 29, 30, 32, the W 3/4 of Section 33; Township 25 North, Range 6 East, W.M., Sections 1, 12; Township 25 North, Range 7 East, W.M., that portion of the SW 1/4 west of the Tolt River of Section 1, the W 1/2 SW 1/4 of Sections 3, 4, 5, 6, 7, 8, 9, the W 3/4 and the E 1/2 SE 1/4 of Section 10, the SE 1/4 SW 1/4 and that portion of the E 1/2 west of the Tolt River of Section 11, that portion of the NW 1/4 west of the Tolt River of Section 12, the N 3/4 W 1/2 E 1/2 and the E 1/2 W 1/2 and the SW 1/4 SW 1/4 of Section 14, the W 1/2 and the S 1/2 SE 1/4 of Sections 15, 16, 17, 20, 21, 22, the W 1/4 of Section 23, the SE 1/4 and the NW 1/4 and the NE 1/4 SW 1/4 of Section 26, the N 1/4 and the W 1/4 of Sections 27, 28, 29, 30, 32, 33, that portion west of Griffin Creek of Section 34; Township 26 North, Range 7 East, W.M., the SW 1/4 and the S 1/2 SE 1/4 of Sections 26, 27, 31, 32, 33, the W 1/4 and the N 3/4 E 1/2 W 1/2 of Section 34, the N 1/2 and the E 3/4 N 1/2 S 1/2 of Sections 35, 36.

(b) Fire Protection District 28. All forest lands, except state and federal forest lands within the legal description as follows: Township 19 North, Range 6 East, W.M., Section 1 north of the White River; Township 19 North, Range 7 East, W.M., Section 6 NE 1/4, NW 1/4, SW 1/4 north of the White River, SE 1/4; Township 20 North, Range 5 East, W.M., Section 13 east of the White River, and Section 24 east of the White River; Township 20, Range 6 East, Section 1, E 1/2 Section 8, Sections 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, Section 19 north of the White River, Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, Section 29 north of the White River, Section 30 north of the White River, Section 32 north of the White River, Section 33 north of the White River, Section 34 north of the White River, Section 35 north of the White River, Section 36 north of the White River, Section or Claim Number 37; Township 20, Range 7 East, W.M., Sections 6, 7, 18, 19, 30, 31.

(c) Fire Protection District 27. All forest lands except state and federal forest lands, within the legal description as follows: Township 24 North, Range 6 East, W.M., Section 12; Township 24 North, Range 7 East, W.M., Sections 3, 4, the E 1/4 and the N 1/2 NW 1/4 of Section 5, the N 3/4 E 1/2 W 1/2 and the W 1/2 E 1/2 and the NE 1/4 NE 1/4 and the SE 1/4 SE 1/4 of Section 6, the N 1/2 of Sections 7, 8, 9, 10, 11, 13, 14, 15, the NE 1/4 and the N 1/2 SE 1/4 and the NW 1/4 of Section 16, the E 1/2 NE 1/4 of Sections 17, 18, 19, the NE 1/4 of 22, the N 1/2 of Section 23, the N 1/2 and the N 1/2 SE 1/4 of Section 24; Township 25 North, Range 7 East, W.M., Section 30, the E 3/4 and the N 3/4 W 1/4 of Section 31, the SW 1/4 and the E 1/2 SE 1/4 of Sections 32, 33, 34; Township 24 North, Range 8 East, W.M., the W 1/2 NW 1/4 of Section 19.

(d) Fire Protection District 38. All forest lands, except state and federal forest lands, within the legal description as follows: Township 23 North, Range 7 East, W.M., Section 1; Township 24 North, Range 7 East, W.M., Section 36; Township 23 North, Range 8 East, W.M., Sections 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 22, 23, 24, 25, 26, 27, 35; Township 24 North, Range 8 East, W.M., Sections 17, 18, 19, 20, 21,

south 3/4 of Section 26, that portion of the SE 1/4 of Section 27 as bounded by 428th Avenue SE on the west and north and section line on the east and south, the N 1/2 and the SW 1/4 of Sections 28, 29, 30, 31, 32, 33, the E 1/2 and the S 3/4 of the W 1/2 of Sections 34, 35; Township 23 North, Range 9 East, W.M., Sections 7, 17, 18, 19, 30.

(e) Fire Protection District 43. All forest lands, except state and federal forest lands, within the legal description as follows: Township 22 North, Range 5 East, W.M., Section 12; Township 23 North, Range 5 East, W.M., Section 24; Township 22 North, Range 6 East, W.M., Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, that portion of the SE 1/4 of Section 25 as bounded by 268th Avenue SE on the west, SE 264th Street on the north and section line on the east and south, Sections 27, 28, 29, 30, 31, 32, 33, 34, 35, that portion of the NE 1/4 of Section 36 as bounded by 268th Avenue SE on the west, SE Ravensdale Way on the south, Landsburg Road SE on the west and section line on the north; Township 23 North, Range 6 East, W.M., Sections 19, 29, 30, 31, 32, 33, 34, 35, 36; Township 22 North Range 7 East, W.M., Sections 5, 6, 7, 8, 18, 19, 32.

(2) Forest lands removed from the protection zone will not be assessed under RCW 76.04.610 or 76.04.630.

(3) The exchange of fire protection responsibility involving Fire Protection Districts 10, 27, 38, 43 will be effective January 1, 1994.

(4) The exchange of fire protection responsibility involving Fire Protection Districts 18, 22, and 24 will be effective January 1, 1998.

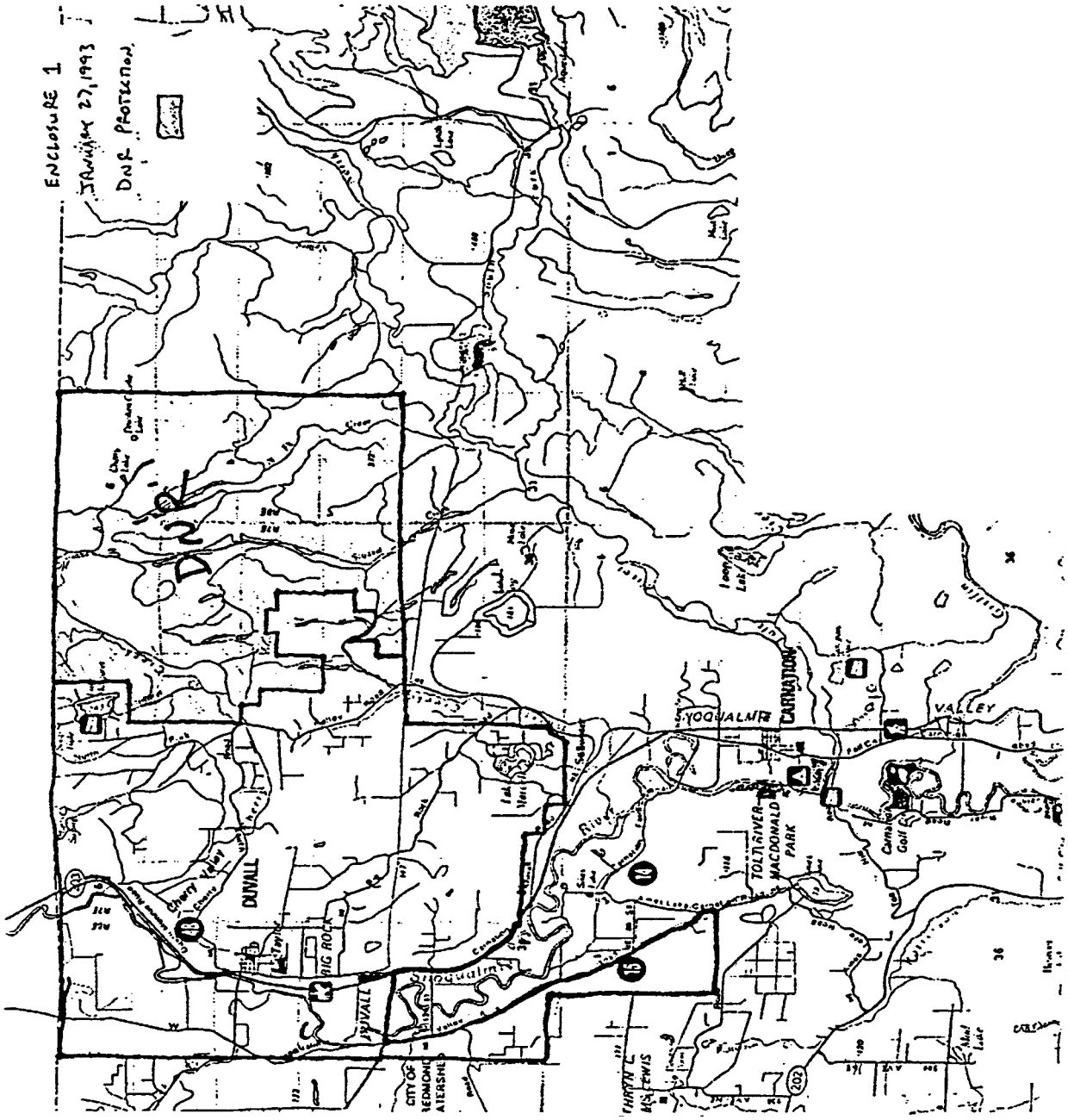
[Statutory Authority: RCW 76.04.165. 97-05-066, § 332-24-730, filed 2/19/97, effective 1/1/98; 93-14-016 (Order 613), § 332-24-730, filed 6/25/93, effective 7/26/93.]

WAC 332-24-735 Forest protection zone—King County fire district #45. (1) It is determined that some forest lands within King County are best protected by fire protection districts. Therefore, the forest lands, situated within the following fire protection district, are removed from the department's forest protection zone and become the protection responsibility of the district:

(a) Fire Protection District 45. All forest lands within the legal description as follows: Township 25 North, Range 6 East W.M. Section 1, 12; Township 26 North, Range 6 East W.M. Section 1, 2, 11, 12, 13, 14, 23, 24, 25, 26, 35, 36; Township 26 North, Range 7 East W.M. Section: the N 3/4 of the W 1/2 of 3, 4, 5, 6, 7, 8, 9, the S 1/2 and the SE 1/4 NW 1/4 and the SW 1/4 NE 1/4 of 14, the SW 1/4 and the S 1/2 NW 1/4 and the NW 1/4 NW 1/4 of 15, 16, 17, 18, 19, 20, 21, 22, the E 1/2 NE 1/4 and the N 3/4 W 1/2 W 1/2 and all remaining land N of Stossel Creek County Road in 23, 28, 29, 30, 31, 32, 33.

(2) Forest lands removed from the protection zone will not be assessed under RCW 76.04.610 or 76.04.630.

(3) The exchange of fire protection responsibility will be effective January 1, 1994.



[Statutory Authority: RCW 76.04.165. 93-24-065 (Order 616), § 332-24-735, filed 11/29/93, effective 12/30/93.]

WAC 332-24-900 Captions—Chapter 332-24 WAC. As used in this chapter, subchapter and section captions constitute no part of the law.

[Statutory Authority: RCW 76.04.015. 87-11-005 (Order 504), § 332-24-900, filed 5/8/87.]

Chapter 332-26 WAC
EMERGENCY AND SHORT TERM RULES

Reviser's note: The department of natural resources frequently adopts rules of a temporary or emergency nature relating to forest closures due to fire conditions, insect infestation control districts, and other special matters concerning the industry. These rules are filed and may be inspected at the Office of the Code Reviser, Legislative Building, Olympia, but because of their transitory nature they are (on authority of RCW 34.05.210(4)) omitted from this code. Copies may be obtained from the Director of Natural Resources, Olympia.

Chapter 332-28 WAC
HARBOR LINE COMMISSION

WAC

332-28-010 Meydenbauer Bay—Harbor area—Line of navigability.

WAC 332-28-010 Meydenbauer Bay—Harbor area—Line of navigability. (1) This resolution has application to that portion of Meydenbauer Bay on Lake Washington lying southeasterly of a line formed by the extension south-

westerly of the southeasterly line of S. E. Bellevue Place, Bellevue, Washington, and the extension northeasterly of the northwesterly line of Lot 39, Shorelands, according to plat recorded in volume 330 of plats at page 8, records of King County, Washington.

(2) That portion of Meydenbauer Bay above described lies within, in front of or within one mile of the corporate limits of the city of Bellevue, Washington, but the commission finds that there presently exists no necessity to reserve any part thereof for landings, wharves, streets and other conveniences of navigation and commerce, and for this reason declines to establish harbor area therein.

(3) The following described line lying within the above described portion of Meydenbauer Bay, to wit:

Commencing at the east quarter section corner of Section 31, Township 25 North, Range 5 East, W.M., whose "X" coordinate is 1,661,520.58 and whose "Y" coordinate is 225,661.29 referred to the Washington coordinate system, North Zone, and running thence on an azimuth of 78°51'17" a distance of 963.76 feet to a point whose "X" coordinate is 1,660,575.00 and whose "Y" coordinate is 225,475.00 referred to said coordinate system; thence on an azimuth of 312°06'17" a distance of 420.00 feet to a point hereinafter referred to as Point "A"; thence on an azimuth of 2°21'10" to an intersection with the southwesterly extension of the southeasterly margin of S.E. Bellevue Place, said intersection being the true point of beginning of this line description.

Thence continuing on an azimuth of 2°21'10" to a point 167.66 feet distance from said Point "A"; thence on an azimuth of 312°06'17" a distance of 415.00 feet, thence on an azimuth of 37°24'19" a distance of 125.00 feet and thence on an azimuth of 127°24'19" to an intersection with the northeasterly extension of the northwesterly line of Lot 39, Shorelands as recorded in vol. 33 of plats, page 8, records of King County, Washington, said point of intersection being the terminus of this line description, has been established by the superior court for King County in Cause No. 513081, entitled *Grill v. Meydenbauer Bay Yacht Club*, to be the boundary line between privately owned shorelands and the publicly owned lake bed. The commission confirms, approves, ratifies and adopts the line so located and established, or as it may be changed and relocated by decree of the supreme court of this state in appeal of the above cause, as the line of navigability in said portion of Meydenbauer Bay. In the event said supreme court shall decree in said appeal that the courts of this state have no jurisdiction to locate and establish the line of navigability, then the above described line shall be and is hereby adopted as the line of navigability in said portion of Meydenbauer Bay.

(4) In the event that the establishment of harbor area within the above described portion of Meydenbauer Bay should become necessary at some time in the future, such harbor area shall be restricted exclusively to lands publicly owned and no part thereof shall be established upon privately owned shorelands.

[Resolution No. 1, filed 8/16/60.]

Chapter 332-30 WAC
AQUATIC LAND MANAGEMENT

WAC

332-30-100 Introduction.
332-30-103 Purpose and applicability.
332-30-106 Definitions.
332-30-107 Aquatic land planning.
332-30-108 Establishment of new harbor areas.
332-30-109 Harbor area.
332-30-114 Management agreements with port districts.
332-30-115 Harbor area use classes.
332-30-116 Harbor line relocation.
332-30-117 Waterways.
332-30-119 Sale of second class shorelands.
332-30-122 Aquatic land use authorization.
332-30-123 Aquatic land use rentals for water-dependent uses.
332-30-125 Aquatic land use rental rates for nonwater-dependent uses.
332-30-126 Sand and gravel extraction fees.
332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471).
332-30-128 Rent review.
332-30-131 Public use and access.
332-30-137 Nonwater-dependent uses.
332-30-139 Marinas and moorages.
332-30-144 Private recreational docks.
332-30-145 Booming, rafting and storage of logs.
332-30-148 Swim rafts and mooring buoys.
332-30-151 Reserves (RCW 79.68.060).
332-30-157 Commercial clam harvesting.
332-30-163 River management.
332-30-166 Open water disposal sites.
332-30-170 Tideland and shoreland exchange.
332-30-171 Residential uses on state-owned aquatic lands.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-30-112 Establishment of new areas for navigation and commerce outside of harbor areas. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-112, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-118 Tidelands, shorelands and beds of navigable waters. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-118, filed 7/3/80.] Repealed by 00-19-001, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

332-30-121 Aquatic land use classes (excluding harbor areas). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-121, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-124 Aquatic land use authorization. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-124, filed 7/3/80.] Repealed by 84-23-014 (Resolution No. 470), filed 11/9/84. Statutory Authority: 1984 c 221 and RCW 79.90.540.

332-30-130 Public use. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-130, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-133 Environmental concerns. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-133, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.

332-30-134 Aquatic land environmental protection. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-134, filed 11/5/85.]

	Repealed by 00-19-002, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.
332-30-136	Houseboats. [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-136, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-142	Piers. [Statutory Authority: RCW 43.30.150. 83-02-055 (Order 389, Resolution No. 403), § 332-30-142, filed 1/4/83; 80-09-005 (Order 343), § 332-30-142, filed 7/3/80.] Repealed by 00-19-003, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.
332-30-154	Marine aquatic plant removal (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-154, filed 7/3/80.] Repealed by 00-19-004, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.
332-30-160	Renewable resources (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-160, filed 7/3/80.] Repealed by 85-22-066 (Resolution No. 500), filed 11/5/85. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080] and chapter 79.93 RCW.
332-30-161	Aquaculture. [Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-161, filed 11/5/85.] Repealed by 00-19-005, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.
332-30-169	Artificial reefs (RCW 79.68.080). [Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-169, filed 7/3/80.] Repealed by 00-19-006, filed 9/6/00, effective 10/7/00. Statutory Authority: RCW 43.30.150, 79.90.540.

WAC 332-30-100 Introduction. Subsection (2)(e) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). State-owned aquatic lands include approximately 1,300 miles of tidelands, 6,700 acres of constitutionally established harbor areas and all of the submerged land below extreme low tide which amounts to some 2,000 square miles of marine beds of navigable waters and an undetermined amount of fresh water shoreland and bed. These lands are managed as a public trust and provide a rich land base for a variety of recreational, economic and natural process activities. Management concepts, philosophies, and programs for state-owned aquatic lands should be consistent with this responsibility to the public.

These lands are "a finite natural resource of great value and an irreplaceable public heritage" and will be managed to "provide a balance of public benefits for all citizens of the state." (RCW 79.90.450 and 79.90.455)

(1) **Management goals.** Management of state-owned aquatic lands will strive to:

(a) Foster water-dependent uses;

(b) Ensure environmental protection;

(c) Encourage direct public use and access;

(d) Promote production on a continuing basis of renewable resources;

(e) Allow suitable state aquatic lands to be used for mineral and material production; and

(f) Generate income from use of aquatic lands in a manner consistent with the above goals.

(2) **Management methods.** To achieve the above, state-owned aquatic lands will be managed particularly to promote uses and protect resources of statewide value.

(a) Planning will be used to prevent conflicts and mitigate adverse effects of proposed activities involving resources and aquatic land uses of statewide value. Mitigation shall be provided for as set forth in WAC 332-30-107(6).

(b) Areas having unique suitability for uses of statewide value or containing resources of statewide value may be managed for these special purposes. Harbor areas and scientific reserves are examples. Unique use requirements or priorities for these areas may supersede the need for mitigation.

(c) Special management programs may be developed for those resources and activities having statewide value. Based on the needs of each case, programs may prescribe special management procedures or standards such as lease auctions, resource inventory, shorter lease terms, use preferences, operating requirements, bonding, or environmental protection standards.

(d) Water-dependent uses shall be given a preferential lease rate in accordance with RCW 79.90.480. Fees for non-water-dependent aquatic land uses will be based on fair market value.

(e) Research and development may be conducted to enhance production of renewable resources.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-100, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-100, filed 7/3/80.]

WAC 332-30-103 Purpose and applicability. (1) This chapter applies to all state-owned aquatic lands. Except when specifically exempted, this chapter applies to aquatic lands covered under management agreements with port districts (WAC 332-30-114).

(2) These regulations do not supersede laws and regulations administered by other governmental agencies covering activities falling under their jurisdiction on these same lands.

(3) These regulations contain performance standards as well as operational procedures to be used in lease management, land use planning and development actions by the department and port districts. These regulations shall apply each to the department and to the port districts, when such districts manage aquatic lands as the result of management agreements, and neither entity shall impose management control over the other under these regulations except as provided for in such management agreements.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-103, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-103, filed 7/3/80.]

WAC 332-30-106 Definitions. All definitions in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). For the purpose of this chapter:

(1) "Accretion" means the natural buildup of shoreline through the gradual deposit of alluvium. The general principle of common law applicable is that a riparian or littoral

owner gains by accretion and reliction, and loses by erosion. Boundary lines generally will change with accretion.

(2) "Alluvium" means material deposited by water on the bed or shores.

(3) "Anniversary date" means the month and day of the start date of an authorization instrument unless otherwise specified in the instrument.

(4) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh water, brackish water or salt water areas. Aquaculture practices may include but are not limited to hatching, seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.

(5) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters (RCW 79.90.010). Aquatic lands are part of the public lands of the state of Washington (see subsection (49) of this section). Included in aquatic lands are public places subsection (51) of this section, waterways subsection (74) of this section, bar islands, avulsively abandoned beds and channels of navigable bodies of water, managed by the department of natural resources directly, or indirectly through management agreements with other governmental entities.

(6) "Aquatic land use classes" means classes of uses of tideland, shorelands and beds of navigable waters that display varying degrees of water dependency. See WAC 332-30-121.

(7) "Authorization instrument" means a lease, material purchase, easement, permit, or other document authorizing use of state-owned aquatic lands and/or materials.

(8) "Avulsion" means a sudden and perceptible change in the shoreline of a body of water. Generally no change in boundary lines occurs.

(9) "Beds of navigable waters" means those submerged lands lying waterward of the line of extreme low tide in navigable tidal waters and waterward of the line of navigability in navigable lakes, rivers and streams. The term, "bedlands" means beds of navigable waters.

(10) "Commerce" means the exchange or buying and selling of goods and services. As it applies to aquatic land, commerce usually involves transport and a land/water interface.

(11) "Covered moorage" means slips and mooring floats that are covered by a single roof with no dividing walls.

(12) "Department" means the department of natural resources.

(13) "Dredging" means enlarging or cleaning out a river channel, harbor, etc.

(14) "Educational reserves" means accessible areas of aquatic lands typical of selected habitat types which are suitable for educational projects.

(15) "Enclosed moorage" means moorage that has completely enclosed roof, side and end walls similar to a car garage i.e. boathouse.

(16) "Environmental reserves" means areas of environmental importance, sites established for the continuance of environmental baseline monitoring, and/or areas of historical, geological or biological interest requiring special protective management.

(17) "Erosion" means the gradual cutting away of a shore by natural processes. Title is generally lost by erosion, just as it is gained by accretion.

(18) "Extreme low tide" means the line as estimated by the federal government below which it might reasonably be expected that the tide would not ebb. In Puget Sound area generally, this point is estimated by the federal government to be a point in elevation 4.50 feet below the datum plane of mean lower low water, (0.0). Along the Pacific Ocean and in the bays fronting thereon and the Strait of Juan due Fuca, the elevation ranges down to a minus 3.5 feet in several locations.

(19) "Fair market value" means the amount of money which a purchaser willing, but not obligated, to buy the property would pay an owner willing, but not obligated, to sell it, taking into consideration all uses to which the property is adapted and might in reason be applied (Donaldson v. Greenwood, 40 Wn.2d 238, 1952). Such uses must be consistent with applicable federal, state and local laws and regulations affecting the property as of the date of valuation.

(20) "First class shorelands" means the shores of a navigable lake or river belonging to the state not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or the inner harbor line where established and within or in front of the corporate limits of any city, or within two miles thereof upon either side (RCW 79.90.040). These boundary descriptions represent the general rule; however exceptions do exist. To determine if the shorelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(21) "First class tidelands" means the shores of navigable tidal waters belonging to the state lying within or in front of the corporate limits of any city, or within one mile thereof upon either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.030). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide, or the inner harbor line where established, is the waterward boundary. To determine if the tidelands are within two miles of the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(22) "Fiscal year" means a period of time commencing on the first day of July and ending on the thirtieth day of June of the succeeding year. A fiscal year is identified by the year in which it ends, e.g., fiscal year 1985 is the period July 1, 1984 through June 30, 1985.

(23) "Floating house" means any floating structure that is designed, or has been substantially and structurally remodeled or redesigned, to serve primarily as a residence. "Floating houses" include house boats, house barges, or any floating structures that serve primarily as a residence and do not qualify as a vessel as provided in subsection (74) of this section. A floating structure that is used as a residence and is capable of navigation, but is not designed primarily for navigation, nor normally is capable of self propulsion and use as a means of transportation is a floating house, not a vessel.

(24) "Governmental entity" means the federal government, the state, county, city, port district, or other municipal corporation or political subdivision thereof.

(25) "Harbor area" means the area of navigable waters determined as provided in section 1 of Article XV of the state Constitution which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce (RCW 79.90.020). Harbor areas exist between the inner and outer harbor lines as established by the state harbor line commission.

(26) "Harbor area use classes" means classes of uses of harbor areas that display varying degrees of conformance to the purpose for which harbor areas were established under the Constitution.

(27) "Harbor line" means either or both: (a) A line (outer harbor line) located and established in navigable waters as provided for in section 1 of Article XV of the state Constitution beyond which the state shall never sell or lease any rights whatever to private persons (RCW 79.90.015). (b) A line (inner harbor line) located and established in navigable waters between the line of ordinary high tide and the outer harbor line, constituting the inner boundary of the harbor area (RCW 79.90.025).

(28) "Inflation rate" means, for a given year, the percentage rate of change in the previous calendar year's all commodity producer price index of the Bureau of Labor Statistics of the United States department of commerce (RCW 79.90.-465). The rate published by the bureau during May of each year for the previous calendar year shall be the rate for the previous calendar year.

(29) "Interest rate" shall be twelve percent per annum (RCW 79.90.520).

(30) "Interim uses" means certain uses which may, under special circumstances, be allowed to locate in harbor areas (see WAC 332-30-115(5)).

(31) "Inventory" means both a compilation of existing data on man's uses, and the biology and geology of aquatic lands as well as the gathering of new information on aquatic lands through field and laboratory analysis. Such data is usually presented in map form such as the *Washington Marine Atlas*.

(32) "Island" means a body of land entirely and customarily surrounded by water. Land in navigable waters which is only surrounded by water in times of high water, is not an island within the rule that the state takes title to newly formed islands in navigable waters.

(33) "Line of navigability" means a measured line at that depth sufficient for ordinary navigation as determined by the board of natural resources for the body of water in question.

(34) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility (RCW 79.90.465).

(35) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility (RCW 79.90.465).

(36) "Marine land" means those lands from the mean high tide mark waterward in marine and estuarine waters, including intertidal and submerged lands. Marine lands represents a portion of aquatic lands.

(37) "Meander line" means fixed determinable lines run by the federal government along the banks of all navigable bodies of water and other important rivers and lakes for the purpose of defining the sinuosities of the shore or bank and as a means of ascertaining the areas of fractional subdivisions of the public lands bordering thereon.

(38) "Moorage facility" means a marina, open water moorage and anchorage area, pier, dock, mooring buoy, or any other similar fixed moorage site.

(39) "Motorized vehicular travel" means movement by any type of motorized equipment over land surfaces.

(40) "Multiple use management" means a management philosophy which seeks to insure that several uses or activities can occur at the same place at the same time. The mechanism involves identification of the primary use of the land with provisions such as performance standards to permit compatible secondary uses to occur.

(41) "Navigability or navigable" means that a body of water is capable or susceptible of having been or being used for the transport of useful commerce. The state of Washington considers all bodies of water meandered by government surveyors as navigable unless otherwise declared by a court.

(42) "Navigation" means the movement of vessels to and from piers and wharves.

(43) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility (RCW 79.90.465).

(44) "Open moorage" means moorage slips and mooring floats that have completely open sides and tops.

(45) "Open water moorage and anchorage areas" are areas of state-owned aquatic lands leased for moorage and anchorage that do not abut uplands and do not include a built connection to the uplands. They are generally in the center of a waterbody, to provide moorage in addition to any marinas and docks along the edge of the waterbody. They may contain mooring buoys, floating moorage docks, other moorage facilities not connected to the shoreline, and/or anchorage areas, as determined by the lessee and approved by the department. These areas are leased in accordance with WAC 332-30-139(5) and subject to the restrictions therein.

(46) "Optimum yield" means the yield which provides the greatest benefit to the state with particular reference to food production and is prescribed on the basis of the maximum sustainable yield over the statewide resource base as modified by any relevant economic, social or ecological factor.

(47) "Ordinary high tide" means the same as mean high tide or the average height of high tide. In Puget Sound, the mean high tide line varies from 10 to 13 feet above the datum plane of mean lower low water (0.0).

(48) "Ordinary high water" means, for the purpose of asserting state ownership, the line of permanent upland vegetation along the shores of nontidal navigable waters. In the absence of vegetation, it is the line of mean high water.

(49) "Port district" means a port district created under Title 53 RCW (RCW 79.90.465).

(50) "Public benefit" means that all of the citizens of the state may derive a direct benefit from departmental actions in the form of environmental protection; energy and mineral production; utilization of renewable resources; promotion of navigation and commerce by fostering water-dependent uses; and encouraging direct public use and access; and generating revenue in a manner consistent with RCW 79.90.455.

(51) "Public lands" means lands belonging to or held in trust by the state, which are not devoted to or reserved for a particular use by law, and include state lands, tidelands, shorelands and harbor areas as herein defined, and the beds of navigable waters belonging to the state (RCW 79.01.004).

(52) "Public interest" means. . . . (reserved)

(53) "Public place" means a part of aquatic lands set aside for public access through platted tidelands, shorelands, and/or harbor areas to the beds of navigable waters.

(54) "Public tidelands" means tidelands belonging to and held in public trust by the state for the citizens of the state, which are not devoted to or reserved for a particular use by law.

(55) "Public trust" means that certain state-owned tidelands, shorelands and all beds of navigable waters are held in trust by the state for all citizens with each citizen having an equal and undivided interest in the land. The department has the responsibility to manage these lands in the best interest of the general public.

(56) "Public use" means to be made available daily to the general public on a first-come, first-served basis, and may not be leased to private parties on any more than a day use basis.

(57) "Public use beach" means a state-owned beach available for free public use but which may be leased for other compatible uses.

(58) "Public utility line" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines (RCW 79.90.465).

(59) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the Federal Home Loan Bank Board or any successor agency, minus the average inflation rate for the most recent ten calendar years (RCW 79.90.465).

(60) "Reliction" means the gradual withdrawal of water from a shoreline leaving the land uncovered. Boundaries usually change with reliction.

(61) "Renewable resource" means a natural resource which through natural ecological processes is capable of renewing itself.

(62) "Residential use" means any noncommercial habitation of:

(a) A floating house, as defined in WAC 332-30-106(23); or

(b) A vessel, as defined in WAC 332-30-106(74), when any one of the following applies:

(i) Any person or succession of different persons resides on the vessel in a specific location, and/or in the same area on more than a total of thirty days in any forty-day period or on more than a total of ninety days in any three hundred sixty-five-day period. "In the same area" means within a radius of one mile of any location where the same vessel previously moored or anchored on state-owned aquatic lands. A vessel that is occupied and is moored or anchored in the same area, but not for the number of days described in this subsection, is considered used as a recreational or transient vessel;

(ii) The city or county jurisdiction, through local ordinance or policy, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility where it is moored;

(iii) The operator of the facility where the vessel is moored, through the moorage agreement, billing statement, or facility rules, defines the use as a residential use or identifies the occupant of the vessel as a resident of the vessel or of the facility; or

(iv) The occupant or occupants identify the vessel or the facility where it is moored as their residence for voting, mail, tax, or similar purposes.

(63) "Riparian" means relating to or living or located on the bank of a natural water course, such as a stream, lake or tidewater.

(64) "Scientific reserves" means sites set aside for scientific research projects and/or areas of unusually rich plant and animal communities suitable for continuing scientific observation.

(65) "Second class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city (RCW 79.90.045). These boundary definitions represent the general rule; however, exceptions do exist. To determine if shorelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(66) "Second class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city and between the line of ordinary high tide and the line of extreme low tide (RCW 79.90.035). In general, the line of ordinary high tide is the landward boundary. The line of extreme low tide is the waterward boundary. To determine if the tidelands are more than two miles from the corporate limits of a city, the distance is measured along the shoreline from the intersection of the corporate limit with the shoreline.

(67) "Shore" means that space of land which is alternately covered and left dry by the rising and falling of the water level of a lake, river or tidal area.

(68) "State-owned aquatic lands" means those aquatic lands and waterways administered by the department of natural resources or managed under department agreement by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department of natural resources (RCW 79.90.465).

(69) "Statewide value." The term statewide value applies to aquatic land uses and natural resources whose use, management, or intrinsic nature have statewide implications. Such uses and resources may be either localized or distributed statewide. Aquatic land uses of statewide value provide major statewide public benefits. Public use and access, renewable resource use and water-dependent use have been

cited by the legislature as examples of such uses. Aquatic land natural resources of statewide value are those critical or uniquely suited to aquatic land uses of statewide value or to environmental quality. For example, wild and scenic rivers, high quality public use beaches and aquatic lands fronting state parks are of statewide value for public use and access. Commercial clam and geoduck beds and sites uniquely suited to aquaculture are of statewide value to renewable resource use. Harbor areas are of statewide value to water-dependent navigation and commerce. Certain aquatic land habitats and plant and animal populations are of statewide value to recreational and commercial fisheries, wildlife protection, and scientific study.

(70) "Streamway" means stream dependent corridor of single or multiple, wet or dry channel, or channels within which the usual seasonal or storm water run-off peaks are contained, and within which environment the flora, fauna, soil and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(71) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of cargo and/or passengers (RCW 79.90.465).

(72) "Thread of stream - thalweg" means the center of the main channel of the stream at the natural and ordinary stage of water.

(73) "Town" means a municipal corporation of the fourth class having not less than three hundred inhabitants and not more than fifteen hundred inhabitants at the time of its organization (RCW 35.01.040).

(74) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels, including, but not limited to, registration as a vessel by an appropriate government agency.

(75) "Water-dependent use" means use which cannot logically exist in any location but on the water. Examples include, but are not limited to, waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks (RCW 79.90.465(1)).

(76) "Waterfront" means a parcel of property with upland characteristics which includes within its boundary, a physical interface with the existing shoreline of a body of water.

(77) "Water oriented use" means use which historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and houseboats (RCW 79.90.465).

(78) "Waterway" means an area platted across aquatic lands or created by a waterway district providing for access between the uplands and open water, or between navigable bodies of water.

(79) "Wetted perimeter" means a fluctuating water line which separates submerged river beds from the dry shoreland areas at any given time.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-106, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-30-106, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-106, filed 11/5/85. Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-106, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-106, filed 7/3/80.]

WAC 332-30-107 Aquatic land planning. Subsection (4) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Multiple use.** The aquatic lands of Washington are a limited and finite resource. Management of these lands will allow for multiple use by compatible activities to the greatest extent feasible.

(2) **Planning objectives.** Aquatic land management will strive for the best combination of aquatic uses to achieve the goals in WAC 332-30-100. Planning should allow for a variety of uses and activities, such as navigation; public use; production of food; energy; minerals and chemicals; and improvement of aquatic plant and animal habitat, occurring simultaneously or seasonally on state-owned aquatic lands.

(3) **Shoreline management.** The Shoreline Management Act and shoreline master program planning, together with supplemental planning as described in subsection (5) of this section, will be the primary means for identifying and providing appropriate uses of statewide value.

(4) **Coordination.** Coordination with shoreline management programs will be accomplished by:

(a) Identifying aquatic land areas of particular statewide value for public access, habitat and water-dependent and renewable resource use.

(b) Informing appropriate shoreline planning bodies of the location and particular value of aquatic lands identified in (a) of this subsection.

(c) Participating in shoreline planning and suggesting ways to incorporate and balance statewide values.

(d) Proposing to the appropriate local jurisdiction that shoreline plans be updated when new information concerning statewide values becomes available or when existing plans do not adequately address statewide values.

(5) **Supplemental planning.** The department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) may supplement the shoreline master program planning process with management plans necessary to meet the constitutional and statutory proprietary responsibilities for state-owned aquatic lands. Plans developed and implemented under this subsection will involve aquatic lands, resources, and activities requiring intensive management, special protection, or conflict resolution and will be developed when these needs are not provided for by shoreline master program planning. Aquatic land uses and activities implemented through this supplemental planning process will be consistent with adopted shoreline master pro-

grams and the Shoreline Management Act. Planning activities will be closely coordinated with local, state, and federal agencies having jurisdiction and public participation will be encouraged.

(6) **Mitigation.** Shoreline master program planning and additional planning processes described in subsection (5) of this section will be the preferred means for identifying and mitigating adverse impacts on resources and uses of statewide value. In the absence of such planning directed to these values and uses, the department (for aquatic lands not covered under port management agreements) or port districts (for aquatic lands managed under port management agreements) will mitigate unacceptable adverse impacts on a case-by-case basis by the following methods in order of preference:

(a) Alternatives will be sought which avoid all adverse impacts.

(b) When avoidance is not practical, alternatives shall be sought which cause insignificant adverse impacts.

(c) Replace, preferably on-site, impacted resources and uses of statewide value. It must be demonstrated that these are capable of being replaced.

(d) Payment for lost value, in lieu of replacement, may be accepted from the aquatic land user in limited cases where an authorized use reduces the economic value of off-site resources, for example, bacterial pollution of nearby shellfish beds.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-107, filed 11/5/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-107, filed 7/3/80.]

WAC 332-30-108 Establishment of new harbor areas. (1) The policies and standards in this section apply to establishment of new harbor areas by the harbor line commission under Article XV of the Washington Constitution and to establishment of new harbor areas in Lake Washington by the commissioner of public lands under RCW 79.94.240.

(2) New harbor areas will only be established to serve the following purposes:

(a) Reserving adequate urban space for navigation and commerce facilities; and

(b) Preventing urban development from disrupting navigation.

(3) New harbor areas will only be established when a need is demonstrated by existing development or by plans, studies, project proposals or other evidence of development potential in, or waterward of, the proposed harbor area.

(4) Unless there is an overriding statewide navigation and commerce need, new harbor areas will only be established when:

(a) Compatible with local land use and shoreline management plans;

(b) Supported by the city, county and port district;

(c) The area is physically and environmentally suitable for navigation and commerce purposes; and

(d) Necessary support facilities and services are likely to be available.

(5) The shoreline length of a new harbor area established along a city's waterfront will be determined by the need and purposes to be served and by conformance with subsection (4) of this section.

(6) Harbor line placement standards.

(a) Harbor lines will be placed to serve constitutional harbor area purposes as they relate to the individual site in question.

(b) Harbor lines will be placed to provide practical development guidance. Harbor lines will relate to navigation and commerce development which has occurred or can reasonably be expected to occur.

(c) Inner harbor lines will be placed at the boundary of public aquatic land ownership. Inner harbor lines may be placed waterward of the boundary of public ownership to avoid conflicts with other guidelines in this section.

(d) Outer harbor lines will generally be placed near the ends of existing conforming structures located on public aquatic lands. The lines shall provide adequate space for navigation and commerce and prevent development from interfering with navigation.

(e) Unless there is an overriding statewide navigation and commerce need, harbor lines will be placed in accordance with:

(i) Local, state and federal land use plans and environmental regulations;

(ii) Maintenance of environmental quality;

(iii) Existing abutting harbor lines; and

(iv) Existing aquatic land development.

[Statutory Authority: RCW 79.90.080, 79.92.010, 79.94.240 and 79.94.250. 84-23-008 (Resolution No. 469), § 332-30-108, filed 11/9/84.]

WAC 332-30-109 Harbor area. (1) Harbor areas shall be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(2) Water dependent commerce shall be given preference over other uses of harbor areas.

(3) Every consideration shall be given to meeting the expanding need for navigation and water dependent commerce in existing harbor areas.

(4) Several industries using the same harbor area facility shall be given preference over single industry use.

(5) Shallow draft uses, such as barge terminals and marinas, shall be preferred over deep draft uses, in areas requiring extensive maintenance dredging.

(6) Harbor lines may be adjusted, when authorized by the legislature, to provide reasonable opportunity to meet the present and future needs of commerce and navigation.

(7) In harbor areas where no current constitutional use (navigation and commerce) is called for or practical and other uses are in demand, interim uses may be authorized by the board of natural resources if in the public interest.

(8) The department will, where in the public interest, promote the conversion of existing nonconforming uses to conforming uses by assisting if possible, such users in resiting their operations and by withdrawing renewal options on affected state harbor area leases.

(9) The department will promote full development of all existing suitable harbor areas for use by water dependent commerce.

(10) Abandoned structures determined to be unsightly or unsafe by the department shall be removed from harbor areas by the owner of the structures upon demand by the depart-

ment or by the department in which case the owner will be assessed the costs of such removal.

(11) Floating houses are not permitted in harbor areas.

(12) Resource management cost account portion of the revenue from leasing of harbor areas shall be used to reduce the general tax burden and for aquatic land management programs that are of benefit to the public.

(13) Harbor areas will be managed to produce revenue for the public unless withdrawn as a public place.

(14) Harbor area lease renewal applications must be returned to the department within sixty days of expiration of prior lease term. If not timely returned, the harbor area involved will be put up for public auction.

(15) The department will encourage local government, state and federal agencies to cooperate in planning for the following statewide harbor management needs:

(a) Reserve adequate and appropriate space within the jurisdiction to serve foreseeable navigation and commerce development needs.

(b) Coordinate plans for aquatic land and upland development so that areas reserved for navigation and commerce will be usable in the future.

(c) Identify areas where interim uses may be allowed.

(d) Identify needed changes in harbor lines.

(e) Minimize the environmental impacts of navigation and commerce development.

(f) Prevent existing and future interim uses in harbor areas from lowering the suitability of harbor areas for navigation and commerce development.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-109, filed 10/17/02, effective 11/17/02. Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-109, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-109, filed 7/3/80.]

WAC 332-30-114 Management agreements with port districts. By mutual, formal, written agreement the department may authorize a port district to manage some or all of those aquatic lands within the port district meeting the criteria stated in subsection (2) of this section. The port district shall adhere to the aquatic land management laws and policies of the state as specified in chapters 79.90 through 79.96 RCW. Port district management of state aquatic lands shall be consistent with all department regulations contained in chapter 332-30 WAC. These requirements shall govern the port's management of state aquatic lands. The administrative procedures used to carry out these responsibilities shall be those provided for port districts under Title 53 RCW.

(1) Interpretations. Phrases used in legislation (RCW 79.90.475) providing for management agreements with ports shall have the following interpretation:

(a) "Administrative procedures" means conducting business by the port district and its port commission.

(b) "Aquatic lands abutting or used in conjunction with and contiguous to" means state-owned aquatic lands which share a common or coincident boundary with an upland parcel or in the event the state aquatic land does not attach to an upland parcel (i.e., bedlands, harbor areas, etc.), this term shall include the aquatic land adjacent to and waterward of the port owned or controlled aquatic parcel which has a common or coincident boundary to the upland parcel.

(c) "Diligently pursued" means such steady and earnest effort by the port district and the department which results in the resolution of any deficiencies preventing the issuance of a management agreement to the port.

(d) "Leasehold interest" means the benefits and obligations of both the lessor and lessee resulting from a lease agreement.

(e) "Model management agreement" means a document approved by the board of natural resources to be used for all individual management agreements with port districts.

(f) "Operating management" means the planning, organizing, staffing, coordinating, and controlling for all activities occurring on a property.

(g) "Otherwise managed" means having operating management for a property.

(h) "Revenue attributable" means all rentals, fees, royalties, and/or other payments generated from the use of a parcel; or the most likely amount of money due for the use of a parcel as determined by procedures in chapter 332-30 WAC, whichever is greater.

(2) Criteria for inclusion. State-owned parcels of aquatic lands, including those under lease or which may come under lease to a port, abutting port district uplands may be included in a management agreement if criteria set forth in RCW 79.90.475 are met and if there is documentation of ownership, a lease in good standing, or agreement for operating management, in the name of the port district for the upland parcel.

(3) A model management agreement and any amendments thereto shall be developed by the department and representatives of the port industry. The board of natural resources shall review and approve the model management agreement and any subsequent amendments.

(4) Processing requests. The following application requirements, review procedures, and time frame for responses involved in the issuance of a management agreement to a port district shall apply.

(a) Application requirements. The following items must be submitted to the department by the port district in order for its request to be an application for a management agreement:

(i) A copy of a resolution of the port commission that directs the port district to seek a management agreement;

(ii) An exhibit showing the location of and a description adequate to allow survey for each parcel of state-owned aquatic land to be included in the agreement, plus sufficient information on abutting port parcels to satisfy the requirements of subsection (2) of this section;

(iii) The name, address, and phone number of the person or persons that should be contacted if the department has any questions about the application.

(b) Time frames for responses:

(i) Within thirty days of receipt of an application, the department shall notify the port district if its application is complete or incomplete;

(ii) Within thirty days of receipt of notification by the department of any incompleteness in their application, the port district shall submit the necessary information;

(iii) Within ninety days of receipt of notification by the department that the application is complete, the port district and department shall take all steps necessary to enter into an agreement.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-114, filed 11/9/84.]

WAC 332-30-115 Harbor area use classes. These classes are based on the degree to which the use conforms to the intent of the constitution that designated harbor areas be reserved for landings, wharves, streets and other conveniences of navigation and commerce.

(1) **Water-dependent commerce.** Water-dependent commerce are all uses that cannot logically exist in any other location but on the water and are aids to navigation and commerce. These are preferred harbor area uses. Leases may be granted up to the maximum period allowed by the Constitution and may be renewed. Typical uses are:

(a) Public or private vessel terminal and transfer facilities which handle general commerce including the cargo handling facilities necessary for water oriented uses.

(b) Public and private terminal facilities for passenger vessels.

(c) Watercraft construction, repair, maintenance, servicing and dismantling.

(d) Marinas and mooring areas.

(e) Tug and barge companies facilities.

(f) Log booming.

(2) **Water-oriented commerce.** Water oriented commerce are commercial uses which historically have been dependent on waterfront locations, but with existing technology could be located away from the waterfront. Existing water-oriented uses may be asked to yield to water dependent commercial uses when the lease expires. New water-oriented commercial uses will be considered as interim uses. Typical uses are:

(a) Wood products manufacturing.

(b) Watercraft sales.

(c) Fish processing.

(d) Sand and gravel companies.

(e) Petroleum handling and processing plants.

(f) Log storage.

(3) **Public access.** Facilities for public access are lower priority uses which do not make an important contribution to navigation and commerce for which harbor areas are reserved, but which can be permitted providing that the harbor area involved is not needed, or is not suitable for water-dependent commerce. Leases may be issued for periods up to thirty years with possible renewals. Typical uses are:

(a) Public fishing piers.

(b) Public waterfront parks.

(c) Public use beaches.

(d) Aquariums available to the public.

(e) Underwater parks and reefs.

(f) Public viewing areas and walkways.

(4) **Residential use.** Residential uses do not require harbor area locations and are frequently incompatible with water-dependent commerce. New residential uses will not be permitted to locate in harbor areas, except that vessels used as a residence will be permitted wherever other vessels are permitted if the residential uses are otherwise allowed by WAC 332-30-171 and meet all applicable laws and lease requirements. This restriction on new leases differentiates residential uses from interim uses. Existing residential uses may be asked to yield to other uses when the lease expires. Proposed renewals of residential leases will require the same analysis as specified for interim uses.

(5) **Interim uses.** Interim uses are all uses other than water-dependent commerce, existing water-oriented commerce, public access facilities, and residential uses. Interim uses do not require waterfront locations in order to properly function. Leases may only be issued and reissued for interim uses in exceptional circumstances and when compatible with water dependent commerce existing in or planned for the area. See WAC 332-30-137 Nonwater-dependent uses for evaluation standards.

(6) Areas withdrawn are harbor areas which are so located as to be currently unusable. These areas are temporarily withdrawn pending future demand for constitutional uses. No leases are issued.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-115, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-115, filed 11/5/85. Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-115, filed 10/6/83. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-115, filed 7/3/80.]

WAC 332-30-116 Harbor line relocation. Harbor areas are established to meet the needs of navigation and commerce. Harbor line relocations must be consistent with this purpose.

(1) Harbor line relocations should:

(a) Maintain or enhance the type and amount of harbor area needed to meet long-term needs of water dependent commerce; and

(b) Maintain adequate space for navigation beyond the outer harbor line.

(2) When in agreement with the above guidelines, consideration of harbor line relocations should include:

(a) Plans and development guidelines of public ports, counties, cities, and other local, state, and federal agencies;

(b) Economic and environmental impacts;

(c) Public access to the waterfront;

(d) Indian treaty rights;

(e) Cumulative impacts of similar relocations on water dependent commerce; and

(f) The precedent setting effect on other harbor areas.

(3) Procedure.

(a) Upon receipt of a completed harbor line relocation proposal form and SEPA checklist (if necessary), department of natural resources staff shall arrange for a public hearing.

(b) Notice of the hearing shall be mailed at least thirty days in advance to the concerned city, county, port district, interest groups, adjacent tide, shore or upland owners and others who indicate interest; and shall be published at least twenty days in advance in a local newspaper of general circulation.

(c) The hearing, conducted by a hearings officer, shall be held in the county in which the relocation is proposed. Department staff shall present the proposal and preliminary recommendations. The hearing shall be recorded.

(d) Comments may be submitted at the hearing or mailed to the department. Written comments must be postmarked no later than fourteen days after the hearing.

(e) Department of natural resources staff will finalize SEPA compliance (if necessary) and prepare a final report of recommendations to the harbor line commission.

(f) No later than sixty days after the date of the public hearing, the harbor line commission shall consider the staff report and public comments, then approve, modify or deny the relocation. A copy of the commission's resolution shall be sent within ten days to the proponent, the city, county, port district and other parties who have requested it.

[Statutory Authority: Chapter 79.92 RCW. 83-21-004 (Order 404, Resolution No. 433), § 332-30-116, filed 10/6/83.]

WAC 332-30-117 Waterways. (1) **Purpose and applicability.** This section describes the requirements for authorizing use and occupation of waterways under the department's authority as proprietor of state-owned aquatic lands. This section applies to waterways established in accordance with RCW 79.93.010 and 79.93.020. This section does not apply to uses of Salmon Bay Waterway, or to the East and West Duwamish Waterways in Seattle authorized under RCW 79.93.040.

(2) **Priority use.** Providing public navigation routes between water and land for conveniences of navigation and commerce is the priority waterway use.

(3) **Permit requirement.** In order to assure availability of waterways for present and future conveniences of navigation and commerce, moorage (other than transient moorage for fewer than 30 days), and other waterway uses shall require prior authorization from the department. Permits may be issued for terms not exceeding one year if there will be no significant interference with the priority waterway use or short-term moorage. Permits may be issued for terms not exceeding five years for uses listed in subsection (4) of this section in instances in which existing development, land use, ownership, or other factors are such that the current and projected demand for priority waterway uses is reduced or absent.

(4) **Permit priority.** In cases of competing demands for waterways, the following order of priority will apply:

(a) Facilities which provide public access to adjacent properties for loading and unloading of watercraft;

(b) Water-dependent commerce, as defined in WAC 332-30-115(1), related to use of the adjacent properties;

(c) Other water-dependent uses;

(d) Facilities for nonnavigational public access;

(e) Other activities consistent with the requirements in WAC 332-30-131(4) for public use facilities.

(5) **Waterway permits.** All necessary federal, state, and local permits shall be acquired by those proposing to use waterways. Copies of permits must be furnished to the department prior to authorizing the use of waterways.

(6) **Obstructions.** Permanent obstruction of waterways, including filling is prohibited. Structures associated with authorized uses in waterways shall be capable of ready removal. Where feasible, anchors and floats shall be preferred over pilings.

(7) **Permit process.** Applications for waterway permits will be processed as follows:

(a) Local government review of permit applications will be requested.

(b) Public comment will be gathered through the shoreline permit process, if applicable. If no shoreline permit is required, public comment will be gathered through the methods described in WAC 332-41-510(3).

(c) Applications will be reviewed for consistency with the policy contained in this chapter.

(d) Evaluation will consider existing, planned, and foreseeable needs and demands for higher priority uses in the waterway and in the associated water body.

(8) The department will require waterway permittees to provide security in accordance with WAC 332-30-122(5) to insure the provisions of waterway permits are fulfilled.

(9) **Cancellation.** Permission to use waterways is subject to cancellation in order to satisfy the needs of higher priority waterway uses. Transient moorage may be required to move at any time. Waterway permits are cancellable upon ninety days' notice when the sites are needed for higher priority uses.

(10) **Monitoring.** Local governments will be encouraged to monitor waterway use and to report any uses not in compliance with this regulation.

(11) **Planning.** Planning for waterway use will be encouraged. The shoreline planning process should provide for the long range needs of preferred waterway uses and other statewide values. Planning should also consider the availability of other public property, such as platted street ends, to serve anticipated needs.

(12) **Existing uses.** Existing waterway uses, structures, and obstructions will be reviewed for compliance with this section. Uses not in compliance shall be removed within one year from the date notification of noncompliance is mailed unless the public interest requires earlier removal. Unless early removal is required, removal may be postponed if the department receives a request for vacation of the waterway from the city or port district in accordance with RCW 79.93.060. If the request for waterway vacation is denied, the structure must be removed within six months of mailing of notice of denial or within one year of the original date of notification of noncompliance, whichever is later.

(13) **Fees.** Waterway permit fees will be determined on the same basis as required for similar types of uses on other state-owned aquatic lands.

(14) **Filled areas.** Certain waterways contain unauthorized fill material. The filled areas have generally assumed the characteristics of the abutting upland. Nonwater-dependent uses may be allowed on existing fills when there will be no interference with priority or other permitted waterway uses and when permitted under applicable local, state, and federal regulations.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-117, filed 11/5/85.]

WAC 332-30-119 Sale of second class shorelands. (1) Under RCW 79.01.474 state-owned second class shorelands on lakes legally determined or considered by the department of natural resources to be navigable, may be sold to private owners of abutting upland property where it is determined by the board of natural resources that the shorelands have minimal public value for uses such as providing access, recreation

or other public benefit. The amount of shoreland subject to sale to any one individual shall be the amount fronting a lot within a recorded subdivision plat; or the greater of 100 feet or ten percent of the frontage owned by the applicant outside of a recorded subdivision. However, it shall be in the public interest to retain ownership of publicly owned second class shorelands on navigable lakes where any of the following conditions exist:

(a) The shorelands are natural, conservancy, or equivalent designated areas under the local shoreline master program.

(b) The shorelands are located in front of land with public upland ownership or public access easements.

(c) Further sales of shorelands would preclude the establishment of public access to the lake, or adversely affect the public use and access to the lake.

(2) Prior to the sale of second class shorelands on a navigable lake, the department will:

(a) Depict on a suitable map the current ownership of all shorelands and identify those shorelands potentially available for sale as provided under WAC 332-30-119(1).

(b) Identify any privately owned shorelands, acquisition of which would benefit the public.

(c) Identify and establish the waterward boundary of the shorelands potentially available for sale or acquisition.

(d) Make an appraisal of the value of the shorelands potentially available for sale or acquisition in accordance with as many of the following techniques as are appropriate to the parcels in question:

(i) The market value of shorelands as of the last equivalent sale before the moratorium multiplied by the percentage increase in value of the abutting upland during the same period, i.e.,

FMV = (V2/V1) x (S1)

FMV = Current fair market value of shorelands

S1 = Value of shorelands at time of last equivalent sale

V1 = Value of abutting upland at time of last equivalent shoreland sale

V2 = Current fair market value of upland to a maximum of 150 feet shoreward

(ii) Techniques identified in adopted aquatic land management WACs e.g. WAC 332-30-125

(iii) The sales price of the shoreland shall be the fair market value as determined in (2)(d)(i)(ii) but not less than five percent of the fair market value of the abutting uplands, less improvements, to a maximum depth of one hundred fifty feet landward from the line of ordinary high water.

(e) If necessary, prepare a lake management plan in cooperation with local government to guide future department activities on the publicly owned aquatic lands.

(3) The board of natural resources shall determine whether or not the sale would be in the public interest, and a sales price shall be established by the department of natural resources in a reasonable period of time.

[Statutory Authority: RCW 43.30.150 and 79.01.474. 80-08-071 (Order 342), § 332-30-119, filed 7/1/80.]

WAC 332-30-122 Aquatic land use authorization. All requirements in this section shall apply to the department. Subsection (2) of this section (except subsection (2)(a)(iii) and (b)(iii) of this section), subsections (3)(a), and (4)(a) shall apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **General requirements.**

(a) In addition to other requirements of law, aquatic land activities that interfere with the use by the general public of an area will require authorization from the department by way of agreement, lease, permit, or other instrument.

(i) Suitable instruments shall be required for all structures on aquatic lands except for those federal structures serving the needs of navigation.

(ii) The beds of navigable waters may be leased to the owner or lessee of the abutting tideland or shoreland. This preference lease right is limited to the area between the landward boundary of the beds and the -3 fathom contour, or 200 feet waterward, whichever is closer to shore. However, the distance from shore may be less in locations where it is necessary to protect the navigational rights of the public.

(iii) When proposing to lease aquatic lands to someone other than the abutting property owner, that owner shall be notified of the intention to lease the area. When not adverse to the public's ownership, the abutting owner's water access needs may be reasonably accommodated.

(b) Determination of the area encumbered by an authorization for use shall be made by the department based on the impact to public use and subsequent management of any remaining unencumbered public land.

(i) Operations involving fixed structures will include the area physically encumbered plus the open water area needed to operate the facility.

(ii) Areas for individual mooring buoys will be a circle with a radius equal to the expected swing of the vessel or object moored. Only the area encumbered at any given point in time shall be used to calculate any rentals due.

(iii) Areas for utility line easements will normally be ten feet wider than the overall width of the structure(s) placed in the right of way.

(c) All necessary federal, state and local permits shall be acquired by those proposing to use aquatic lands. Copies of permits must be furnished to the department prior to authorizing the use of aquatic lands. When evidence of interest in aquatic land is necessary for application for a permit, an authorization instrument may be issued prior to permit approval but conditioned on receiving the permit.

(2) **Application review.** In addition to other management considerations, the following special analysis shall be given to specific proposed uses:

(a) Environment.

(i) Authorization instruments shall be written to insure that structures and activities on aquatic lands are properly designed, constructed, maintained and conducted in accordance with sound environmental practices.

(ii) Uses which cause adverse environmental impacts may be authorized on aquatic lands only upon compliance with applicable environmental laws and regulations and appropriate steps as may be directed are taken to mitigate substantial or irreversible damage to the environment.

(iii) Nonwater-dependent uses which have significant adverse environmental impacts shall not be authorized.

(b) Public use and access.

(i) Wherever practical, authorization instruments for use of aquatic lands shall be written to provide for public access to the water.

(ii) Areas allocated for first-come, first-served public use shall not be managed to produce a profit for a concessionaire or other operator without a fee being charged.

(iii) Notice will be served to lessees of tidelands and shorelands allocated for future public use that prior to renewal of current leases, such leases will be modified to permit public use or will be terminated.

(c) Authorization to use aquatic lands shall not be granted to any person or organization which discriminates on the basis of race, color, creed, religion, sex, age, or physical or mental handicap.

(d) Authorization instruments for the installation of underwater pipelines, outfalls and cables may be granted when proper provisions are included to insure against substantial or irreversible damage to the environment and there is no practical upland alternative.

(3) **Rents and fees.**

(a) When proposed uses of aquatic lands requiring an authorization instrument (other than in harbor areas) have an identifiable and quantifiable but acceptable adverse impact on state-owned aquatic land, both within and without the authorized area, the value of that loss or impact shall be paid by the one so authorized in addition to normal rental to the department or port as is appropriate.

(b) Normal rentals shall be calculated based on the classification of the aquatic land use(s) occurring on the property. Methods for each class of use are described in specific WAC sections.

(c) Advance payments for two or more years may be collected in those situations where annual payments are less than document preparation and administration costs.

(d) Rentals for leases will normally be billed annually, in advance. If requested by a lessee in good standing, billings will be made:

(i) Quarterly on a prorated basis when annual rental exceeds four thousand dollars; or

(ii) Monthly on a prorated basis when annual rental exceeds twelve thousand dollars.

(e) A one percent per month charge shall be made on any amounts which are past due, unless those amounts are appealed. Users of aquatic properties shall not be considered in good standing when they have amounts more than thirty days past due.

(4) **Structures and improvements on aquatic lands.**

(a) Authorization for placing structures and improvements on public aquatic lands shall be based on the intended use, other uses in the immediate area, and the effect on navigational rights of public and private aquatic land owners. Structures and improvements shall:

(i) Conform to the laws and regulations of any public authority;

(ii) Be kept in good condition and repair by the authorized user of the aquatic lands;

(iii) Not be, nor become, a hazard to navigation;

(iv) Be removed by the authorized user as stipulated in the authorization instrument.

(b) In addition to aquatic land rentals and fees, rent shall be charged for use of those structures and improvements:

(i) Owned by the department, under contract to the department for management; or that become state property under RCW 79.94.320;

(ii) As may be agreed upon as part of the authorization document;

(iii) Installed on an authorized area without written concurrence of the department; or

(iv) Not covered by an application for use of aquatic lands, or a lawsuit challenging such requirements, within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(c) Only land rental and fees shall be charged for public aquatic lands occupied by those structures and improvements that are:

(i) Authorized in writing by the department;

(ii) Installed prior to June 1, 1971 (effective date of the Shoreline Management Act) on an area authorized for use from the department; or

(iii) Covered by an application for use of aquatic lands within ninety days after the date of mailing of the department's written notification of unauthorized occupancy of public aquatic lands.

(5) **Insurance, bonds, and other security.**

(a) The department may require authorized users of aquatic lands to carry insurance, bonding, or provide other forms of security as may be appropriate for the use or uses occurring on public property, in order to ensure its sustained utility and future value.

(b) Proof of coverage shall be acceptable to the department if provided by any of the following:

(i) Insurance and/or bonding companies licensed by the state;

(ii) Recognized insurance or bonding agent for the authorized user;

(iii) Savings account assignment from authorized user to department; or

(iv) Cash deposit.

(c) The amount of security required of each user shall be determined by the department and adjusted periodically as needed.

(i) Any portion of the required security relating to payment of rent or fees shall be limited to an amount not exceeding two year's rental or fees.

(ii) Required security related to other terms of the agreement shall be based on the estimated cost to the department of enforcing compliance with those terms.

(iii) Cash deposits shall not be required in an amount exceeding one-twelfth of the annual rental or fees. If this amount is less than the total required security, the remainder shall be provided through other forms listed in (b) of this subsection.

(d) Security must be provided on a continual basis for the life of the agreement. Security arrangements for less than the life of the agreement shall be accepted as long as those arrangements are kept in force through a series of renewals or extensions.

[Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-30-122, filed 11/5/91, effective 12/6/91. Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-122, filed 11/9/84.]

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: UV x LA x .30 x r = AR. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) **Overall considerations.**

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases having structural uses that require a physical interface with upland property when a water-dependent use occurs on such uplands (in conjunction with the water-dependent use on the aquatic lands);

(ii) Shall be used for remote moorage leases by selecting an upland parcel as detailed in subsection (2) of this section;

(iii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iv) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) **Physical criteria of upland tax parcels.**

(a) Leases used in conjunction with and supportive of activities on the uplands. The upland tax parcel used shall be waterfront and have some portion with upland characteristics. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section.

(b) Remote moorage leases. The upland tax parcel used shall be waterfront, have some portion with upland characteristics; and

(i) If the remote moorage is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the remote moorage is similar in nature of use to moorages in the area associated with a local upland facility, be an appropriate parcel at the facility; or

(iii) If the remote moorage is not associated with a local upland facility, be the parcel closest in distance to the moorage area.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease and method of rental establishment. On this basis, the following situations will be considered inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification not reflecting fair market value. Examples include classifications under: State-regulated utilities (chapter 84.12 RCW), Reforestation lands (chapter 84.28 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the full value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from

such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used for a water-dependent purpose. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used for water-dependent purposes if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be negotiated taking into account the proportion of the improvements each use occupies.

(6) **Real rate of return.**

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) **Stairstepping rental changes.**

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the previous rent.

Example
Previous rent = $100.00 Formula rent = $403.00 Inflation = 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example
Previous rent = $403.00 Formula rent = $100.00 Inflation = 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	$403.00	$100.00	$303.00	$100.00	$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of

rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stairstep period.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-123, filed 11/9/84.]

WAC 332-30-125 Aquatic land use rental rates for nonwater-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) The value of state-owned aquatic lands withdrawn from general public use for private nonwater-dependent use shall be recognized by charging lessees the full fair market rental. No rent shall be charged for improvements, including fills, on aquatic lands unless owned by the state. The fair market rental is based on: (a) Comparable non-DNR market rents, whether based on land value exclusive of improvements, a percent of gross revenues, or other appropriate basis, or if not available (b) the full market value (same as true and fair value) multiplied by the use rate percentage as determined under subsection (2) of this section and published in the Washington State Register.

(2) Use rate percentage.

(a) The percentage rate will be based on nondepartmental market rental rates of return for comparable properties leased on comparable terms in the locality, or when such do not exist;

(b) The percentage rate of return shall be based on the average rate charged by lending institutions in the area for long term (or term equivalent to the length of the lease) mortgages for comparable uses of real property.

(3) Appraisals: The determination of fair market value shall be based on the indications of value resulting from the application of as many of the following techniques as are appropriate for the use to be authorized:

(a) Shore contribution; utilizing differences in value between waterfront properties and comparable nonwaterfront properties. Generally best for related land-water uses which are independent of each other or not needed for the upland use to exist.

(b) Comparable upland use (substitution); utilizing capacity, development, operation, and maintenance ratios between a use on upland and similar use on aquatic land with such ratios being applied to upland value to provide indication of aquatic land value for such use. Generally best for aquatic land uses which are totally independent of adjacent upland yet may also occur on upland totally independent of direct contact with water.

(c) Extension; utilizing adjacent upland value necessary for total use as the value of aquatic lands needed for use on a unit for unit basis. Generally best for aquatic land uses which are integrated with and inseparable from adjacent upland use.

(d) Market data; utilizing verified transactions between knowledgeable buyers and sellers of comparable properties. Generally best for tidelands or shorelands where sufficient data exists between knowledgeable buyers and sellers.

(e) Income; utilizing residual net income of a commercial venture as the indication of investment return to the aquatic land. This can be expressed either as a land rent per acre or as a percent of gross revenues. Generally best for income producing uses where it can be shown that an owner or manager of the operation is motivated to produce a profit while recognizing the need to obtain returns on all factors of production.

(4) Negotiation of rental amounts may occur when necessary to address the uniqueness of a particular site or use.

(5) Rental shall always be more than the amount that would be charged if the aquatic land parcel was used for water-dependent purposes.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-125, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-125, filed 7/3/80.]

WAC 332-30-126 Sand and gravel extraction fees. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Public auction or negotiation.** The royalty for sand, gravel, stone or other aggregate removed from state-owned aquatic lands shall be determined through public auction or negotiation.

(2) **Royalty rate.** A negotiated royalty shall reflect the current fair market value of the material in place.

The "income approach" appraisal technique will normally be used to determine fair market value. Factors considered include, but are not limited to:

(a) The wholesale value of similar material, based on a survey of aggregate producers in the region or market area;

(b) Site specific cost factors including, but not limited to:

(i) Homogeneity of material;

(ii) Access;

(iii) Regulatory permits;

(iv) Production costs.

(3) **Adjustments to initial royalty rate.**

(a) Inflation. Annual inflation adjustments to the initial royalty rate shall be based on changes in the Producer Price Index (PPI) for the commodities of sand, gravel, and stone, as published by the United States Department of Commerce, Bureau of Labor Statistics. Annual PPI adjustments to the initial royalty rate shall begin one year after the effective date of establishment of each contract's royalty rate pursuant to subsection (1) of this section.

(b) Flood control. Initial negotiated royalty rates may be adjusted downward, depending on the degree to which removal of the material will enhance flood control.

(i) Any adjustment shall be based on hydrologic benefit identified in an approved comprehensive flood control management plan adopted by a general purpose local government and any state or federal agency with jurisdiction.

(ii) The department, prior to approving any proposed royalty rate adjustment for flood control benefits, may review the flood control plan to determine whether the material removal actually reduces the potential for flooding.

(4) **Payments.** Royalty payments may be paid monthly or quarterly based on the volume of material sold, transferred from control of the contract holder, or otherwise utilized for purposes of the contract.

(5) **Stockpiling.** Stockpiling of removed material may be permitted.

(a) Material will be stockpiled separately from other material owned or controlled by the contract holder.

(b) Bonding or other satisfactory security will be required to cover the value of stockpiled material.

(6) **Appeals.** The state's determination of royalty rates set under subsections (2) and (3) of this section, are appealable through WAC 332-30-128.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-126, filed 11/5/85.]

WAC 332-30-127 Unauthorized use and occupancy of aquatic lands (see RCW 79.01.471). (1) Aquatic lands determined to be state owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.

(2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.

(3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.

(4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.

(5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.

(6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-127, filed 7/3/80.]

WAC 332-30-128 Rent review. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) **Eligibility to request review.** Any lessee or applicant to lease or release state-owned aquatic lands may request review of any rent proposed to be charged by the department.

(2) **Dispute officers.** The manager of the marine lands division will be the rental dispute officer (RDO). The supervisor of the department, or his designee, will be the rental dispute appeals officer (RDAO).

(3) **Submittals.** A request for review of the rent (an original and two copies) shall be submitted within thirty days of notification by the department of the rent due from the lessee/applicant. The request for review shall contain sufficient information for the officers to make a decision on the appropriateness of the rent initially determined by the department. The burden of proof for showing that the rent is incorrect shall rest with the lessee/applicant.

(4) **Rental due.** The request for review shall be accompanied by one year's rent payment based on the preceding year's rate, or a portion thereof as determined by RCW 79.90.530; or based on the rate proposed by the department, or a portion thereof as determined by RCW 79.90.530, whichever is less. The applicant shall pay any additional rent or be entitled to a refund, with interest, within thirty days after completion of the review process provided in this section.

(5) **Contents of request.** The request for review shall state what the lessee/applicant believes the rent should be and shall contain, at the minimum, all necessary documentation to justify the lessee/applicant's position. This information shall include but not be limited to:

(a) **Rationale.** Why the rent established by the department is inappropriate. The supporting documentation for nonwater-dependent leases may include appraisals by professionally accredited appraisers.

(b) **Lease information.** A description of state-owned aquatic land under lease which shall include, but not be limited to:

(i) Lease or application number;

(ii) Map showing location of lease or proposed lease;

(iii) Legal description of lease area including area of lease;

(iv) The permitted or intended use on the leasehold; and

(v) The actual or current use on the leasehold premises.

(c) **Substitute upland parcel.** A lessee/applicant whose lease rent is determined according to RCW 79.90.480 (water-dependent leases) and who disputes the choice of the upland parcel as provided by WAC 332-30-123, shall indicate the upland parcel that should be substituted in the rental determination and shall provide the following information on the parcel:

(i) The county parcel number;

(ii) Its assessed value;

(iii) Its area in square feet or acres;

(iv) A map showing the location of the parcel; and

(v) A statement indicating the land use on the parcel and justifying why the parcel should be substituted.

(6) **RDO review.**

(a) The RDO shall evaluate the request for review within fifteen days of filing to determine if any further support materials are needed from the lessee/applicant or the department.

(b) The lessee/applicant or the department shall provide any needed materials to the RDO within thirty days of receiving a request from the RDO.

(c) The RDO may, at any time during the review, order a conference between the lessee/applicant and department staff to try to settle the rent dispute.

(d) The RDO shall issue a decision within sixty days of filing of the request. Such decision shall contain findings of fact for the decision. If a decision cannot be issued within that time, the lessee/applicant's request will automatically be granted and the rent proposed by the lessee/applicant will be the rent for the lease until the next rent revaluation; provided

that, the RDO may extend the review period for one sixty-day period.

(7) **RDAO review.**

(a) The RDAO may, within fifteen days of the final decision by the RDO, be petitioned to review that decision.

(b) If the RDAO declines to review the petition on the decision of the RDO, the RDO's decision shall be the final decision of the RDAO.

(c) If the RDAO consents to review the decision, the review may only consider the factual record before the RDO and the written findings and decision of the RDO. The RDAO shall issue a decision on the petition containing written findings within thirty days of the filing of the petition. This decision shall be the RDAO's final decision.

(8) **Board review.**

(a) The board of natural resources (board) may, within fifteen days of the final RDAO decision, be petitioned to review that decision.

(b) If the board declines to review the petition, the RDAO decision shall be the final decision of the board.

(c) If the board decides to review the petition, the department and the lessee/applicant shall present written statements on the final decision of the RDAO within fifteen days of the decision to review. The board may request oral statements from the lessee/applicant or the department if the board decides a decision cannot be made solely on the written statements.

(d) The board shall issue a decision on the petition within sixty days of the filing of the written statements by the lessee/applicant and the department.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-128, filed 11/5/85.]

WAC 332-30-131 Public use and access. This section shall not apply to private recreational docks. Subsections (2) and (3) of this section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114). Public use and access are aquatic land uses of statewide value. Public access and recreational use of state-owned aquatic land will be actively promoted and protected.

(1) **Access encouraged.** Other agencies will be encouraged to provide, in their planning, for adequate public use and access and for protection of public use and access resources.

(2) **Access grants.** Aquatic Land Enhancement Account funds will be distributed to state and local agencies to encourage provision of public access to state-owned aquatic lands.

(3) **Access advertised.** State-owned aquatic lands particularly suitable for public use and access will be advertised through appropriate publications.

(4) **No-fee access agreements.** No-fee agreements may be made with other parties for provision of public use and access to state-owned aquatic lands provided the other party meets the following conditions:

(a) The land must be available daily to the public on a first-come, first-served basis and may not be leased to private parties on any more than a day-use basis.

(b) Availability of free public use must be prominently advertised by appropriate means as required. For example, signs may be required on the premises and/or on a nearby public road if the facility is not visible from the road.

(c) When the use is dependent on the abutting uplands, the managing entity must own, lease or control the abutting uplands.

(d) User fees shall not be charged unless specifically authorized by the department and shall not exceed the direct operating cost of the facility.

(e) Necessary nonwater-dependent accessory uses will be allowed in the no-fee agreement area only under exceptional circumstances when they contribute directly to the public's use and enjoyment of the aquatic lands and comply with WAC 332-30-137. Such nonwater-dependent uses shall be required to pay a fair-market rent for use of aquatic lands.

(f) Auditable records must be maintained and made available to the state.

(5) **Rent reduction for access.** Leased developments on state-owned aquatic lands which also provide a degree of public use and access may be eligible for a rent reduction. Rental reduction shall apply only to the actual area within the lease that meets public access and use requirements of subsection (4) of this section.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-131, filed 11/5/85.]

WAC 332-30-137 Nonwater-dependent uses. Policy. Nonwater-dependent use of state-owned aquatic lands is a low priority use providing minimal public benefits. Nonwater-dependent uses shall not be permitted to expand or be established in new areas except in exceptional circumstances and when compatible with water-dependent uses existing in or planned for the area. Analysis under this section will be used to determine the terms and conditions of allowable nonwater-dependent use leases. The department will give public notice of sites proposed for nonwater-dependent use leases.

(1) **Exceptional circumstances.** The following are exceptional circumstances when nonwater-dependent uses may be allowed:

(a) Nonwater-dependent accessory uses to water-dependent uses such as delivery and service parking, lunch rooms, and plant offices.

(b) Mixed water-dependent and nonwater-dependent development. The water-dependent component shall be a major project element. The nonwater-dependent use shall significantly enhance water-dependent uses and/or resources of statewide value.

(c) Nonwater-dependent uses in structures constructed, or on sites filled, prior to June 30, 1985.

(d) Expansion or realignment of essential public nonwater-dependent facilities such as airports, highways and sewage treatment plants where upland topography, economics, or other factors preclude alternative locations.

(e) When acceptable sites and circumstances are identified in adopted local shoreline management master programs which provide for the present and future needs of all uses and resources of statewide value, identify specific areas or situations in which nonwater-dependent uses will be allowed, and justify the exceptional nature of those areas or situations.

(2) **Compatibility with water-dependent uses.** Nonwater-dependent uses will only be allowed when they are compatible with water-dependent uses existing in or planned for the area. Evaluation of compatibility will consider the following:

(a) Current and future demands for the site by water-dependent uses.

(b) The effect on the usefulness of adjacent areas for water-dependent uses.

(c) The probability of attracting additional water-dependent or nonwater-dependent uses.

(d) Subsidies offered to water-dependent uses.

(3) **Evaluation.** Proposed nonwater-dependent uses will be evaluated individually. Applicants must demonstrate the proposed nonwater-dependent uses are consistent with subsections (1) and (2) of this section and any other applicable provisions of this chapter.

(4) **Re-leases.** Re-leases of nonwater-dependent uses will be evaluated as new uses. If continuance of the nonwater-dependent use substantially conflicts with uses or resources of statewide value or with shoreline master program planning or supplemental planning developed under WAC 332-30-107(5), or if the site is needed by a use of statewide value, the re-lease will not be approved.

[Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-137, filed 11/5/85.]

WAC 332-30-139 Marinas and moorages. (1) Moorage facilities developed on aquatic lands should meet the following design criteria:

(a) Moorage shall be designed so as to be compatible with the local environment and to minimize adverse esthetic impacts.

(b) Open moorage is preferred in relatively undeveloped areas and locations where view preservation is desirable, and/or where leisure activities are prevalent.

(c) Covered moorage may be considered in highly developed areas and locations having a commercial environment.

(d) Enclosed moorage should be confined to areas of an industrial character where there is a minimum of esthetic concern.

(e) In general, covered moorage is preferred to enclosed moorage and open moorage is preferred to covered moorage.

(f) View encumbrance due to enclosed moorage shall be avoided in those areas where views are an important element in the local environment.

(g) In order to minimize the impact of moorage demand on natural shorelines, large marina developments in urban areas should be fostered in preference to numerous small marinas widely distributed.

(h) The use of floating breakwaters shall be considered as protective structures before using solid fills.

(i) Dry moorage facilities (stacked dry boat storage) shall be considered as an alternative to wet storage in those locations where such storage will:

(i) Significantly reduce environmental or land use impacts within the water area of the immediate shoreline.

(ii) Reduce the need for expansion of existing wet storage when such expansion would significantly impact the environment or adjacent land use.

(2) Anchorages suitable for use by transient, recreational boaters will be identified and established by the department in appropriate locations so as to provide additional moorage space.

(3) Upland sewage disposal approved by local government and appropriate state agencies is required for all vessels used as a residence.

(4) The department shall work with federal, state, local government agencies and other groups to determine acceptable locations for marina development, properly distributed to meet projected public need for the period 1980 to 2010.

(5) The department may lease open water moorage and anchorage areas only to local governments that have authorized the establishment of open water moorage and anchorage areas in their local Shoreline Master Programs within five years of the effective date of this rule. With the department's approval, the local government lessee may install mooring buoys or other floating moorage devices, designate anchorage locations, sublease moorage and anchorage in the area, collect rent and fees for such moorage and anchorage, and otherwise manage the area as a moorage facility. All open water moorage and anchorage areas must meet the following requirements:

(a) Open water moorage and anchorage areas must meet all relevant requirements normally applicable to a marina lease, which may include the placement, design, limitation on the number of vessels or floating houses, and operation of the area and any improvements within the area, payment of rent to the department, consideration of navigational and environmental impacts, and all other applicable permits and other requirements of law.

(b) Open water moorage and anchorage areas may not be in a harbor area nor in any location or configuration that would interfere with water-borne commerce and navigation.

(c) The leasing of state-owned aquatic lands for open water moorage and anchorage areas is subject to all preferences accorded upland, tideland, or shoreland owners in RCW 79.94.070, 79.94.260, 79.94.280, 79.95.010, and WAC 332-30-122.

(d) Any vessel used for residential use or floating house in an open water moorage and anchorage area must comply with WAC 332-30-171.

(e) Except for nongrandfathered floating house moorage as defined in WAC 332-30-171 (7)(a)(ii), nonwater-dependent uses and commercial uses are prohibited in open water moorage and anchorage areas. Uses prohibited by this subsection (e) are allowed when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

The department will not lease an open water moorage and anchorage area to an entity other than a local government agency. This restriction shall not affect use authorizations to public or private entities for mooring buoys, aquaculture net pens, or other floating structures otherwise allowed by law.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-139, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-139, filed 7/3/80.]

WAC 332-30-144 Private recreational docks. (1) **Applicability.** This section implements the permission created by RCW 79.90.105, Private recreational docks, which allows abutting residential owners, under certain circumstances, to install private recreational docks without charge. The limitations set forth in this section apply only to use of state-owned aquatic lands for private recreational docks under RCW 79.90.105. No restriction or regulation of other types of uses on aquatic lands is provided. This section shall not apply to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(2) **Eligibility.** The permission shall apply only to the following:

(a) An "abutting residential owner," being the owner of record of property physically bordering on public aquatic land and either used for single family housing or for a multifamily residence not exceeding four units per lot.

(b) A "dock," being a securely anchored or fixed, open walkway structure visible to boaters and kept in good repair extending from the upland property, primarily used as an aid to boating by the abutting residential owner(s), and accommodating moorage by not more than four pleasure boats typical to the body of water on which the dock is located. Two or more abutting residential owners may install and maintain a single joint-use dock provided it meets all other design requirements of this section; is the only dock used by those owners; and that the dock fronts one of the owners' property.

(c) A "private recreational purpose," being a nonincome-producing, leisure-time, and discretionary use by the abutting residential owner(s).

(d) State-owned aquatic lands outside harbor areas designated by the harbor line commission.

(3) **Uses not qualifying.** Examples of situations not qualifying for the permission include:

(a) Yacht and boat club facilities;

(b) Floating houses, as defined in WAC 332-30-106(23), and vessels used as a residence (as defined in WAC 332-30-106(62));

(c) Resorts;

(d) Multifamily dwellings, including condominium ownerships, with more than four units;

(e) Uses other than docks such as launches and railways not part of the dock, bulkheads, landfills, dredging, breakwaters, mooring buoys, swim floats, and swimming areas.

(4) **Limitations.**

(a) The permission does not apply to areas where the state has issued a reversionary use deed such as for shellfish culture, hunting and fishing, or park purposes; published an allocation of a special use and the dock is inconsistent with the allocation; or granted an authorization for use such as a lease, easement, or material purchase.

(b) Each dock owner using the permission is responsible for determining the availability of the public aquatic lands. Records of the department are open for public review. The department will research the availability of the public aquatic lands upon written request. A fee sufficient to cover costs shall be charged for this research.

(c) The permission is limited to docks that conform to adopted shoreline master programs and other local ordinances.

(d) The permission is not a grant of exclusive use of public aquatic lands to the dock owner. It does not prohibit public use of any aquatic lands around or under the dock. Owners of docks located on state-owned tidelands or shorelands must provide a safe, convenient, and clearly available means of pedestrian access over, around, or under the dock at all tide levels. However, dock owners are not required to allow public use of their docks or access across private lands to state-owned aquatic lands.

(e) The permission is not transferable or assignable to anyone other than a subsequent owner of the abutting upland property and is continuously dependent on the nature of ownership and use of the properties involved.

(f) Vessels used as a residence and floating houses are not permitted to be moored at a private recreational dock, except when such moorage is necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(5) **Revocation.** The permission may be revoked or canceled if:

(a) The dock or abutting residential owner has not met the criteria listed in subsection (2) or (4) of this section; or

(b) The dock significantly interferes with navigation or with navigational access to and from other upland properties. This degree of interference shall be determined from the character of the shoreline and waterbody, the character of other in-water development in the vicinity, and the degree of navigational use by the public and adjacent property owners;

(c) The dock interferes with preferred water-dependent uses established by law; or

(d) The dock is a public health or safety hazard.

(6) **Appeal of revocation.** Upon receiving written notice of revocation or cancellation, the abutting residential owner shall have thirty days from the date of notice to file for an administrative hearing under the contested case proceedings of chapter 34.04 RCW. If the action to revoke the permission is upheld, the owner shall correct the cited conditions and shall be liable to the state for any compensation due to the state from the use of the aquatic lands from the date of notice until permission requirements are met or until such permission is no longer needed. If the abutting residential owner disclaims ownership of the dock, the department may take actions to have it removed.

(7) **Current leases.** Current lessees of docks meeting the criteria in this section will be notified of their option to cancel the lease. They will be provided a reasonable time to respond. Lack of response will result in cancellation of the lease by the department.

(8) **Property rights.** No property rights in, or boundaries of, public aquatic lands are established by this section.

(9) **Lines of navigability.** The department will not initiate establishment of lines of navigability on any shorelands unless requested to do so by the shoreland owners or their representatives.

(10) Nothing in this section is intended to address statutes relating to sales of second class shorelands.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-144, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 79.90.105, 79.90.300, 79.90.455, 79.90.460, 79.90.470, 79.90.475, 79.90.520, 79.68.010, 79.68.68 [79.68.080], and chapter 79.93 RCW. 85-22-066 (Resolution No. 500), § 332-30-144, filed 11/5/85.]

WAC 332-30-145 Booming, rafting and storage of logs. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114).

(1) Unless specifically exempted in writing, all log dumps located on aquatic lands, or operated in direct association with booming grounds on aquatic land, must provide facilities for lowering logs into the water without tumbling, which loosens the bark. Free rolling of logs is not permitted.

(2) Provision must be made to securely retain all logs, chunks, and trimmings and other wood or bark particles of significant size within the leased area. Lessee will be responsible for regular cleanup and upland disposal sufficient to prevent excessive accumulation of any debris on the leased area.

(3) Unless permitted in writing, aquatic land leased for booming and rafting shall not be used for holding flat rafts except:

(a) Loads of logs averaging over 24" diameter.

(b) Raft assembly, disassembly and log sort areas.

(4) Unless permitted in writing, grounding of logs or rafts is not allowed on tidelands leased for booming and rafting. However, tidelands which were leased for booming and rafting prior to January 1, 1980, are exempt from this provision.

(5) No log raft shall remain on aquatic land for more than one year, unless specifically authorized in writing.

(6) For leases granted to serve the general needs of an area such as an island, the leased area shall be made available to others for booming and rafting and at a reasonable charge.

(7) Areas within a lease boundary meeting the definition of log booming are water-dependent uses. The rent for these areas will be calculated according to WAC 332-30-123.

(8) Areas leased for log storage shall have the rent calculated by applying a statewide base unit rent per acre. Temporary holding of logs alongside a vessel for the purpose of loading onto the vessel is neither booming nor storage.

(9) The base unit rent, application to existing leases, and subsequent annual rents will be determined as provided for water-dependent uses under WAC 332-30-123 except for the following modifications:

(a) A formula rental calculation will be made for each such area leased as of July 1, 1984, as though the formula applied on July 1, 1984.

(b) The assessment for an upland parcel shall not be used when the following situations exist:

(i) The parcel is not assessed.

(ii) The size of the parcel in acres or square feet is not known.

(c) When necessary to select an alternative upland parcel, the nearest assessed waterfront parcel shall be used if not excluded by the criteria under (b) of this subsection.

(d) Because of the large size and shape of many log storage areas, there may be more than one upland parcel that could be used in the formula. The department shall treat such multiple parcel situations by using:

(i) The per unit value of each upland parcel applied to its portion of the lease area. If it is not possible or feasible to delineate all portions of the lease area by extending the boundaries of the upland parcel, then;

(ii) The total of the assessed value of all the upland parcels divided by the total acres of all the upland parcels shall be the per unit value applied in the formula.

(e) The total formula rents divided by the total acres under lease for log storage equals the annual base unit rent for fiscal years 1985-1989. That figure is $171.00 per acre.

(f) For purposes of calculating stairstepping of rentals allowed under WAC 332-30-123, the base unit rent multiplied by the number of acres shall be the formula rent. In cases of mixed uses, the log storage formula rent shall be added to the formula rent determinations for the other uses under leases before applying the criteria for stairstepping.

(g) Inflation adjustments to the base rent shall begin on July 1, 1990.

(10) On July 1, 1989, and each four years thereafter, the department shall establish a new base unit rent.

(a) The new base rent will be the previous base rent multiplied by the result of dividing the average water-dependent lease rate per acre for the prior fiscal year by the average water-dependent lease rate per acre for the fiscal year in which the base unit rent was last established. For example, the formula for the base unit rent for fiscal year 1990 would be:

$$\text{FY90 BUR} = \text{FY85 BUR} \times \frac{\text{(FY89 AWLR)}}{\text{(FY85 AWLR)}}$$

(b) When necessary to calculate the average water-dependent lease rate per acre for a fiscal year, it shall be done on or near July 1. The total formula rent plus inflation adjustments divided by the total acres of water-dependent uses affected by the formula during the prior fiscal year shall be the prior fiscal year's average.

(11) If portions of a log storage lease area are open and accessible to the general public, no rent shall be charged for such areas provided that:

(a) The area meets the public use requirements under WAC 332-30-130(9);

(b) Such areas are in a public use status for a continuous period of three months or longer during each year;

(c) The lease includes language addressing public use availability or is amended to include such language;

(d) The department approves the lessee's operations plan for public use, including safety precautions;

(e) Changes in the amount of area and/or length of time for public use availability shall only be made at the time of rental adjustment to the lease; and

(f) Annual rental for such areas will be prorated by month and charged for each month or part of a month not available to the general public.

[Statutory Authority: 1984 c 221 and RCW 79.90.540. 84-23-014 (Resolution No. 470), § 332-30-145, filed 11/9/84. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-145, filed 7/3/80.]

WAC 332-30-148 Swim rafts and mooring buoys. (1) Swim rafts or mooring buoys will not be authorized where such structures will interfere with heavily traveled routes for watercraft, commercial fishing areas or on designated public use - wilderness beaches.

(2) Swim rafts or mooring buoys may be authorized on aquatic lands shoreward of the -3 fathom contour or within 200 feet of extreme low water or line of navigability which-

ever is appropriate. The placement of rafts and buoys beyond the -3 fathom contour or 200 feet will be evaluated on a case by case basis.

(3) No more than one structure may be installed for each ownership beyond extreme low water or line of navigability. However, ownerships exceeding 200 feet as measured along the shoreline may be permitted more installations on a case by case basis.

(4) Swim rafts or buoys must float at least 12" above the water and be a light or bright color.

(5) Mooring buoys may be authorized beyond the limits described above on land designated by the department for anchorages.

(6) Vessels for residences, as defined in WAC 332-30-106(62) and floating houses, as defined in WAC 332-30-106(23) shall not moor at swim rafts, mooring buoys, or other moorage facilities not connected to the shoreline, except within an open water moorage and anchorage area leased to a local government agency as provided in WAC 332-30-139(5). Such moorage may occur when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-148, filed 10/17/02, effective 11/17/02. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-148, filed 7/3/80.]

WAC 332-30-151 Reserves (RCW 79.68.060). (1) Types of reserves: Educational, environmental, scientific - see definitions (WAC 332-30-106).

(2) Aquatic lands of special educational or scientific interest or aquatic lands of special environmental importance threatened by degradation shall be considered for reserve status. Leases for activities in conflict with reserve status shall not be issued.

(3) The department or other governmental entity or institution may nominate specific areas for consideration for reserve status.

(4) Such nominations will be reviewed and accepted or rejected by the commissioner of public lands based upon the following criteria:

(a) The site will accomplish the purpose as stated for each reserve type.

(b) The site will not conflict with other current or projected uses of the area. If it does, then a determination must be made by the commissioner of public lands as to which use best serves the public benefit.

(c) Management of the reserve can be effectively accomplished by either the department's management program or by assignment to another governmental agency or institution.

(5) The department's reserves management program consists of prevention of conflicting land use activities in or near the reserve through lease actions. In those cases where physical protection of the area may be necessary the management of the area may be assigned to another agency.

(6) When DNR retains the management of reserve areas the extent of the management will consist of a critical review of lease applications in the reserve area to insure proposed activities or structures will not conflict with the basis for reserve designation. This review will consist of at least the following:

(a) An environmental assessment.

(b) Request of agencies or institutions previously identified as having a special interest in the area for their concerns with regard to the project.

(7) Proposed leases for structures or activities immediately adjacent to any reserve area will be subjected to the same critical review as for leases within the area if the structures and/or activities have the potential of:

(a) Degrading water quality,

(b) Altering local currents,

(c) Damaging marine life, or

(d) Increasing vessel traffic.

(8) All management costs are to be borne by the administering agency. Generally, no lease fee is required.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-151, filed 7/3/80.]

WAC 332-30-157 Commercial clam harvesting. (1) Commercial clam beds on aquatic lands shall be managed to produce an optimum yield.

(2) The boundaries of clam tracts offered for lease shall be established and identified to avoid detrimental impacts upon significant beds of aquatic vegetation or areas of critical biological significance as well as prevent unauthorized harvesting.

(3) The methods of harvest may only be those as established by law and certified by the department of fisheries.

(4) Surveillance methods will be employed to insure that trespass as well as off-tract harvesting is prevented.

(5) Harvesters must comply with all lease provisions. Noncompliance may result in lease suspension or cancellation upon notification.

(6) Harvesters must comply with all applicable federal, state and local rules and regulations. Noncompliance may result in lease suspension or cancellation upon notification.

(7) If appropriate, the department may secure all necessary permits prior to leasing.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-157, filed 7/3/80.]

WAC 332-30-163 River management. (1) Use and/or modification of any river system shall recognize basic hydraulic principles, as well as harmonize as much as possible with the existing aquatic ecosystems, and human needs.

(2) Priority consideration will be given to the preservation of the streamway environment with special attention given to preservation of those areas considered esthetically or environmentally unique.

(3) Bank and island stabilization programs which rely mainly on natural vegetative systems as holding elements will be encouraged.

(4) Research will be encouraged to develop alternative methods of channel control, utilizing natural systems of stabilization.

(5) Natural plant and animal communities and other features which provide an ecological balance to a streamway, will be recognized in evaluating competing human use and protected from significant human impact.

(6) Normal stream depositions of logs, uprooted tree snags and stumps which abut on shorelands and do not intrude on the navigational channel or reduce flow, or adversely redirect a river course, and are not harmful to life

and property, will generally be left as they lie, in order to protect the resultant dependent aquatic systems.

(7) Development projects will not, in most cases, be permitted to fill indentations such as mudholes, eddies, pools and aeration drops.

(8) Braided and meandering channels will be protected from development.

(9) River channel relocations will be permitted only when an overriding public benefit can be shown. Filling, grading, lagooning or dredging which would result in substantial detriment to navigable waters by reason of erosion, sedimentation or impairment of fish and aquatic life will not be authorized.

(10) Sand and gravel removals will not be permitted below the wetted perimeter of navigable rivers except as authorized under a departments of fisheries and game hydraulics permit (RCW 75.20.100). Such removals may be authorized for maintenance and improvement of navigational channels.

(11) Sand and gravel removals above the wetted perimeter of a navigable river (which are not harmful to public health and safety) will be considered when any or all of the following situations exist:

(a) No alternative local upland source is available, and then the amount of such removals will be determined on a case by case basis after consideration of existing state and local regulations.

(b) The removal is designed to create or improve a feature such as a pond, wetland or other habitat valuable for fish and wildlife.

(c) The removal provides recreational benefits.

(d) The removal will aid in reducing a detrimental accumulation of aggregates in downstream lakes and reservoirs.

(e) The removal will aid in reducing damage to private or public land and property abutting a navigable river.

(12) Sand and gravel removals above the wetted perimeter of a navigable river will not be considered when:

(a) The location of such material is below a dam and has inadequate supplementary feeding of gravel or sand.

(b) Detached bars and islands are involved.

(c) Removal will cause unstable hydraulic conditions detrimental to fish, wildlife, public health and safety.

(d) Removal will impact esthetics of nearby recreational facilities.

(e) Removal will result in negative water quality according to department of ecology standards.

(13) Bank dumping and junk revetment will not be permitted on aquatic lands.

(14) Sand and gravel removal leases shall be conditioned to allow removal of only that amount which is naturally replenished on an annual basis.

[Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-163, filed 7/3/80.]

WAC 332-30-166 Open water disposal sites. (1) Open water disposal sites are established primarily for the disposal of dredged material obtained from marine or fresh waters. These sites are generally not available for disposal of material derived from upland or dryland excavation except when such materials would enhance the aquatic habitat.

(2) Material may be disposed of on state-owned aquatic land only at approved open water disposal sites and only after authorization has been obtained from the department. Applications for use of any area other than an established site shall be rejected. However, the applicant may appeal to the interagency open water disposal site evaluation committee for establishment of a new site.

(3) Application for use of an established site must be for dredged material that meets the approval of federal and state agencies and for which there is no practical alternative upland disposal site or beneficial use such as beach enhancement.

(4) The department will only issue authorization for use of the site after:

(a) The environmental protection agency and department of ecology notify the department that, in accordance with Sections 404 and 401, respectively, of the Federal Clean Water Act, the dredged materials are suitable for in-water disposal and do not appear to create a threat to human health, welfare, or the environment; and

(b) All necessary federal, state, and local permits are acquired.

(5) Any use authorization granted by the department shall be subject to the terms and conditions of any required federal, state, or local permits.

(6) The department shall suspend or terminate any authorization to use a site upon the expiration of any required permit.

(7) All leases for use of a designated site must require notification to DNR in Olympia twenty-four hours prior to each use. DNR Olympia must be notified five working days prior to the first use to permit an on-site visit to confirm with dump operator the site location.

(8) Pipeline disposal of material to an established disposal site will require special consideration.

(9) Fees will be charged at rates sufficient to cover all departmental costs associated with management of the sites. Fees will be reviewed and adjusted annually or more often as needed. A penalty fee may be charged for unauthorized dumping or dumping beyond the lease site. Army Corps of Engineers navigation channel maintenance projects where there is no local sponsor are exempt from this fee schedule.

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(a) Puget Sound and Strait of Juan De Fuca: All disposal sites $0.45 per cubic yard (c.y.), $2,000 minimum

(b) Grays Harbor/Willapa Bay: All disposal sites $0.10 per cubic yard (c.y.), minimum fee $300.00

(c) Damage fee - $5.00/cubic yard

(10) Open water disposal site selection. Sites are selected and managed by the department with the advice of the interagency open water disposal site evaluation committee (a technical committee of the aquatic resources advisory committee). The committee is composed of representatives of the state departments of ecology, fisheries, game, and natural resources as well as the Federal Army Corps of Engineers, National Marine Fisheries Service, Environmental Protection Agency, and Fish and Wildlife Service. The department chairs the committee. Meetings are irregular. The committee has developed a series of guidelines to be used in selecting disposal sites. The objectives of the site selection guidelines are to reduce damage to living resources known to utilize the

area, and to minimize the disruption of normal human activity that is known to occur in the area. The guidelines are as follows:

(a) Select areas of common or usual natural characteristics. Avoid areas with uncommon or unusual characteristics.

(b) Select areas, where possible, of minimal dispersal of material rather than maximum widespread dispersal.

(c) Sites subject to high velocity currents will be limited to sandy or coarse material whenever feasible.

(d) When possible, use disposal sites that have substrate similar to the material being dumped.

(e) Select areas close to dredge sources to insure use of the sites.

(f) Protect known fish nursery, fishery harvest areas, fish migration routes, and aquaculture installations.

(g) Areas proposed for dredged material disposal may require an investigation of the biological and physical systems which exist in the area.

(h) Current velocity, particle size, bottom slope and method of disposal must be considered.

(i) Projects transporting dredged material by pipeline will require individual review.

(j) Placement of temporary site marking buoys may be required.

(k) The department will assure disposal occurs in accordance with permit conditions. Compliance measures may include, but are not limited to, visual or electronic surveillance, marking of sites with buoys, requiring submittal of operator reports and bottom sampling or inspection.

(l) Special consideration should be given to placing material at a site where it will enhance the habitat for living resources.

(m) Locate sites where surveillance is effective and can easily be found by tugboat operators.

(11) The department shall conduct such subtidal surveys as are necessary for siting and managing the disposal sites.

[Statutory Authority: RCW 43.30.150, 79.90.550, 79.90.555 and 79.90.560. 94-23-006 (Order 628), § 332-30-166, filed 11/3/94, effective 12/4/94. Statutory Authority: RCW 79.90.560. 90-02-085, § 332-30-166, filed 1/3/90, effective 2/3/90; 88-13-082 (Order 537, Resolution No. 585), § 332-30-166, filed 6/17/88. Statutory Authority: RCW 79.90.100 and 43.30.150. 85-15-050 (Order 451, Resolution No. 492), § 332-30-166, filed 7/16/85. Statutory Authority: RCW 43.30.150. 80-09-005 (Order 343), § 332-30-166, filed 7/3/80.]

WAC 332-30-170 Tideland and shoreland exchange. The department will use this rule when it considers exchanging tidelands or shorelands with private individuals or public entities pursuant to RCW 79.90.457. The department may exchange these aquatic lands if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.90.455. Those benefits are: Encouraging direct public use and access; fostering water-dependent uses; ensuring environmental protection; utilizing renewable resources; and generating revenue in a manner consistent with these benefits. The department may not exchange state-owned harbor areas or waterways.

(1) **Eligibility criteria.** The department may consider exchanging ownership of tidelands or shorelands with private and other public landowners if the proposed exchange meets the eligibility criteria set forth in (a) and (b) of this subsection.

(a) The economic values of the parcels must be equal or the exchange must result in a net economic gain to the state. The economic value must be determined by a qualified independent appraiser and/or economist and accomplished through a methodology accepted by the department.

(b) The tidelands or shorelands to be conveyed into state ownership must abut navigable water.

(2) **Evaluation criteria.** Subject to available funding, the department will evaluate eligible proposed exchanges according to the following criteria. The department will give priority and preference to proposed exchanges which, in the department's judgment, are in the public interest by providing the greatest public benefits, the least negative impacts, and the most appropriate resolution of other considerations, as set forth in (a), (b) and (c) of this subsection.

(a) The tidelands or shorelands to be conveyed into state ownership must have one or more of the following characteristics:

(i) Be or abut a critical and/or an essential habitat identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(ii) Be or abut a critical area identified by jurisdictions under chapter 36.70A RCW;

(iii) Be an area beneficial to sediment transport and/or nearshore habitat function identified by the National Marine Fisheries Service, state natural resource management agency(s), and/or the United States Department of Fish and Wildlife;

(iv) Be actively used or abut a parcel used in the commercial production of food or fibre or other renewable resource production (for example, commercial grade beds of shellfish and aquaculture facilities);

(v) Abut a state or national wildlife refuge;

(vi) Abut an upland parcel with public upland ownership, easements, or some other formalized agreement that would allow direct public use of and access to the water;

(vii) Be actively used or abut parcel(s) actively used for water-dependent uses or allow for water dependent use;

(viii) Contain a historic or archaeological property listed on or eligible to be listed on the National Register of Historic Places; or

(ix) Generate or have the potential to generate higher revenues than the parcel being transferred out-of-state ownership in a manner consistent with the benefits listed in RCW 79.90.455.

(b) The proposed exchange must have beneficial or no negative impacts on:

(i) Navigation;

(ii) The diversity and health of the local environment including the production and utilization of renewable resources;

(iii) The quantity and quality of public access to the waterfront;

(iv) Treaty rights of federally recognized tribes. The department will solicit comments on a proposed exchange from affected tribes; and

(v) Hazardous waste and contaminated sediments liability issues.

(c) The following issues must also be considered:

(i) Consistency with plans and development guidelines of public ports, counties, cities and other local, state, and federal agencies;

(ii) The relative manageability of the tidelands or shorelands to be exchanged including, but not limited to, the effect of the exchange on management costs, liability and upland access, and the relative proximity of the tidelands or shorelands to be exchanged to other state-owned shorelands or tidelands; and

(iii) The cumulative impacts of similar exchanges on water dependent uses, nonrenewable and renewable natural resources, and total aquatic lands acreage managed by the department.

(3) **Recommendation to the board of natural resources.** The department will provide its recommendations to the board of natural resources in writing, addressing whether the exchange meets the criteria in this rule and the positive and negative impacts of the exchange on public benefits and resources. The department will provide copies of its recommendations to the proponent of the exchange. In general, an exchange should only be recommended by the department and approved by the board of natural resources when, in the department's and the board's judgment, the public benefits associated with the exchange outweigh the negative impacts or other diminution in public benefits.

[Statutory Authority: RCW 79.90.457. 99-07-034 (Order 640), § 332-30-170, filed 3/11/99, effective 4/11/99.]

WAC 332-30-171 Residential uses on state-owned aquatic lands. (1) **Application.** This section applies to residential uses, as defined in WAC 332-30-106(62), and floating houses, moorage facilities, and vessels, as defined in WAC 332-30-106 (23), (38) and (74), as they relate to residential uses, on state-owned aquatic lands. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). This section does not apply to: Activities or structures on aquatic lands not owned by the state; vessels used solely for recreational or transient purposes; floating houses or vessels used as hotels, motels or boatels; or vessels owned and operated by the United States military.

(2) **Limits on the number of residential uses.** Residential uses on state-owned aquatic lands shall only occur in accordance with all federal, state, and local laws. The following apply only to leases entered into following the effective date of this rule unless otherwise provided in subsection (3) of this section.

(a) The total number of slips which may be allocated for residential uses in any marina, pier, open water moorage and anchorage area, or other moorage facility shall be limited to ten percent of the total number of slips within a marina, unless otherwise established as provided in (b) or (c) of this subsection. For the purposes of determining the exact number of residential slips, the department shall round to nearest whole number.

(b) Upon the effective date of this rule, the ten percent limit can be changed by local government, through amendments to the local shoreline master program and/or issuance of a shoreline substantial development conditional use permit, if all of the following conditions are met:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use are expressly addressed and required; and

(ii) Specific locations for residential use slips do not adversely impact habitat or interfere with water-dependent uses.

(c) If a local shoreline master program or local ordinance has established a different percentage limit prior to the date this rule takes effect, the limit established in that shoreline master program or local ordinance shall be the recognized percentage limit. After the effective date of this rule, changes to the percentage limit shall only be recognized by DNR as the percentage limit if the changes are made through amendments to the Shoreline Master Program or adoption of a shoreline substantial development conditional use permit.

(d) Application of the percentage limit to moorage facilities that occupy both state-owned aquatic and privately owned aquatic lands.

(i) If the city or county jurisdiction has not established a percentage limit, then the total number of vessels used as a residence and floating houses in any moorage facility shall be limited to ten percent of the total number of slips or spaces usable for moorage or anchorage in that facility. In this case, when a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the percent limit will be calculated using only the total number of slips that are located on state-owned aquatic lands and will be applied only to the portion of the facility located on state-owned aquatic lands.

(ii) If a county or city has established a percent limit, and a moorage facility occupies both state-owned and nonstate-owned aquatic lands, the department may authorize any or all of the floating houses or vessels with residential uses within the entire facility to be located in the portion of the facility on state-owned aquatic lands.

(e) If a moorage facility has so few moorage slips or spaces that the percent limit allows for less than one residential use slip, then one residential use slip may be authorized, if not otherwise prohibited by the city or county jurisdiction.

(3) **Excess residential use slips.**

(a) This subsection shall apply to all lessees occupying state-owned aquatic lands under written leases with the department as of the effective date of this rule. Within one hundred eighty days of the effective date of this rule, each existing moorage facility lessee shall document the existing percentage of residential use slips within their facility and report this information to the department. This reported percentage shall be referred to as the "reported existing percentage" for the moorage facility lessee.

(i) If the reported existing percentage of residential use slips is greater than the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the reported existing percentage will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes subject to attrition described in subsection (3)(b) of this section. At the time the new lease is entered into, those residential uses in excess of the reported existing percentage will be required to vacate the moorage facility.

(ii) If the reported existing percentage of residential use slips is less than or equal to the ten percent limit established

in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(iii) If a moorage facility lessee fails to report the existing percentage of residential slips within their facility within one hundred eighty days of the effective date of this rule, then the percentage limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will establish the allowable residential use percentage at the beginning of a new lease for the same moorage facility, regardless of whether ownership of the facility changes. At the time the new lease is entered into, those residential uses in excess of the ten percent limit established in this rule, or other locally established limit as described in subsection (2)(b) or (c) of this section, will be required to vacate the moorage facility.

(b) The purpose of this subsection is to describe the process of attrition used to reach compliance with the percentage limit or locally established percentage limit. For all leases entered into following the effective date of this rule, if there are more residential use slips in a moorage facility than allowed by the percent limit, then no new or additional residential use slips, including replacements for grandfathered floating houses under subsection (7)(a) of this section, shall be authorized in that facility. In such cases, any residential uses that leave the facility for a period of time greater than thirty days may not return to the facility until the total number of residential use slips is below the percent limit. For purposes of counting the thirty days described in this subsection (3)(b), the department shall not include time needed for repairs to the vessels or floating houses, nor any time when a vessel is away from the moorage facility but the owner or operator of the vessel continuously maintains a written moorage agreement for that facility.

(c) Marina owners, operators, and/or managers may decrease the ten percent limit on a site-specific basis.

(4) **Waste disposal.** The following apply to all leases entered into following the effective date of this rule:

(a) Sewage. All treated and untreated sewage shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(b) Oil and toxic substances. All oil, grease, corrosive liquids, and other toxic substances shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(c) Solid waste. All solid waste shall be disposed of upland, in accordance with federal, state, and local laws. This section does not require specific disposal methods so long as the measures established by the lessee and the department ensure upland disposal.

(d) Gray water. All gray water shall be disposed of in accordance with federal, state, and local laws. Moorage facilities shall develop and implement best management practices to avoid, to the maximum extent possible, all discharges into waters above state-owned aquatic land, of wastewater from showers, baths, sinks, laundry, decks, and other miscellaneous sources, otherwise known as "gray water." For those unavoidable discharges, the best management practices shall minimize discharges, to the maximum extent possible, of gray water from showers, baths, sinks, laundry, decks, and other miscellaneous sources.

(5) **Responsibilities of lessees with residential uses.** The following apply to leases entered into following the effective date of this rule:

(a) Each department lessee must establish and implement measures satisfactory to the department for ensuring upland waste disposal, and the avoidance or minimization of any discharge of waste, as described in (c) of this subsection, onto or in the waters above state-owned aquatic lands from vessels used for residential use and floating houses. This shall include a contingency plan in case of failure or unavailability of the waste disposal methods identified by the lessee and approved by the department.

(b) Each department lessee must annually, or as otherwise provided in the lease, provide the department with evidence that all vessels used for residential use and floating houses in their facility comply with this rule and the terms of the department lease.

(c) Each department lessee shall fully describe the waste disposal measures. These measures may include, but are not limited to:

(i) Connection to an upland sewage system;

(ii) Periodic sewage pump-out service, either at a pump-out station or with transportable pump-out equipment, including prepayment for such services and proof of participation by residential occupants;

(iii) Installation of appropriate waste receptacles;

(iv) Back-up and clean-up facilities and procedures as needed in case of failure or temporary unavailability of waste disposal systems;

(v) Educational efforts, such as posting of notices, distribution of information, and training for residents on waste disposal methods and requirements;

(vi) Monitoring of activities within the facility to prevent or identify and remedy improper waste disposal;

(vii) Contractual requirements in moorage subleases requiring proper waste disposal by residents; and/or

(viii) Other best management practices and/or best available technologies that are established by any local, state, or federal agency, including the department, or by any appropriate nongovernmental organization, that are satisfactory to the department to ensure upland disposal of waste and avoid or minimize any discharge of waste onto or in the waters above state-owned aquatic lands.

(d) Consistent with all federal, state, and local laws and regulations, all leases issued by the department after the effective date of this rule for moorage facilities with residential uses within them shall require and specify:

(i) Methods to handle the upland disposal and best management practices for the increased waste associated with residential use;

(ii) Specific locations for residential use slips that do not adversely impact habitat or interfere with water-dependent uses.

(6) **Vessels.** Moorage of a vessel, as defined in WAC 332-30-106(74), is a water-dependent use.

(7) **Floating houses.** Moorage of a floating house, as defined in WAC 332-30-106(23), is a water-oriented use.

(a) **Classifying floating house moorage under RCW 79.90.465(2).** In classifying floating house moorage under RCW 79.90.465(2), the department will apply the following rules:

(i) If a floating house moorage site had a floating house moored there under a department lease on October 1, 1984, or if a floating house was moored there for at least three years before October 1, 1984, then the department will classify that site as a water-dependent use for the purposes of determining rent. Such sites may be referred to as "grandfathered" sites.

(ii) If a floating house moorage site did not have a floating house moored there under a department lease on October 1, 1984, nor for at least three years before October 1, 1984, then the department shall classify that site as a nonwater-dependent use. Such sites may be referred to as "nongrandfathered" sites.

(iii) The classification of a grandfathered or nongrandfathered floating house moorage site applies to the specific aquatic land being utilized for moorage of the floating house, not to the floating house itself.

(iv) The department shall classify each individual floating house moorage slip within a moorage facility as a separate site. This may result in a marina containing both grandfathered and nongrandfathered floating house moorage sites.

(v) If a floating house vacates a grandfathered moorage site and either returns within thirty days or is replaced with another floating house within thirty days, then the moorage site will remain grandfathered.

(vi) If a floating house vacates a grandfathered moorage site and does not return within thirty days, future moorage of that floating house in the same or a different site shall be nongrandfathered, unless the floating house qualifies as a replacement floating house under (a)(v) of this subsection.

(vii) After October 1, 1984, if a grandfathered site ceased or ceases being used for floating house moorage for more than thirty consecutive days, then the site shall no longer be grandfathered.

(viii) When counting the thirty days described in (a)(v) through (vii) of this subsection, the department will exclude any reasonable time needed for repair of the floating house.

(ix) If a lessee redesignates a grandfathered floating house moorage slip within the lease area, consistent with the lease requirements, and notifies the department in advance of where the slip is to be relocated, then the slip will remain grandfathered. However, if a nongrandfathered site has a floating house relocated to it after the effective date of this rule, the site shall not be designated as grandfathered as provided in this subsection, (7)(a)(ix).

(x) If a floating house was moored at a grandfathered site on October 1, 1984, but was relocated to a site authorized by the department so that on the effective date of this rule the floating house is moored at a nongrandfathered site, then the department may classify this new location as a grandfathered site if the floating house meets all of the following criteria:

(A) The floating house was on state-owned aquatic land leased on October 1, 1984, or was on state-owned aquatic lands for three years prior to October 1, 1984;

(B) The floating house was continuously on state-owned aquatic lands from October 1, 1984, until the effective date of this rule, except for any reasonable time needed for repair of the house; and

(C) The department receives, within one year after the effective date of this rule, a request to have the current moorage site classified as a grandfathered site.

(b) **Managing grandfathered floating house moorage.** Floating houses moored in grandfathered sites that meet all applicable laws and rules, and are consistent with all lease requirements, may remain. The department shall charge the water-dependent rental rate for such moorage.

(c) **Managing nongrandfathered floating house moorage.**

(i) The department may authorize floating house moorage at a nongrandfathered site only if the department determines that the following conditions are met:

(A) All conditions as set forth in this section;

(B) The specific sites and circumstances for floating house moorage have been identified in an adopted local shoreline management plan that provides for the present and future needs of all uses, considers cumulative impacts to habitat and resources of statewide value, identifies specific areas or situations in which floating house moorage will be allowed, and justifies the exceptional nature of those areas or situations; and

(C) The floating house moorage is compatible with water-dependent uses existing in or planned for the area.

(ii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection, but the site is authorized by a department lease and the floating house and moorage meet all conditions as set forth in this section and is consistent with all lease requirements, then the floating house may remain until the termination of the lease or one year after the effective date of this rule, whichever is later. Thereafter, unless at that time the floating house meets the conditions in (c)(i) of this subsection, the floating house must vacate the nongrandfathered site.

(iii) If a floating house is moored at a nongrandfathered site that does not meet the conditions in (c)(i) of this subsection and is not authorized by a department lease, then the floating house must vacate the site within one year from the effective date of this rule, unless at that time it meets the conditions in (c)(i) of this subsection and the department chooses to grant a lease.

(iv) For nongrandfathered floating house moorage sites, the department shall charge the nonwater-dependent rental rate. If a leased area contains both nongrandfathered floating house moorage along with grandfathered floating house moorage or other water-dependent uses, then the nonwater-dependent rental rate shall be applied to a proportionate share of any common areas used in conjunction with the nongrandfathered floating house moorage, including, but not limited to, docks, breakwaters, and open water areas for ingress and egress to the facility.

(8) **Open water moorage.** For the purposes of this section, open water moorage and anchorage areas are defined in WAC 332-30-106(45).

(a) Vessels used for residential use and floating houses shall be moored, anchored, or otherwise secured only at a marina, pier, or similar fixed moorage facility that is connected to the shoreline, or in open water moorage and anchorage areas described under WAC 332-30-139(5) and subject to the restrictions therein. Vessels used for residential use and floating houses shall not be moored, anchored or otherwise secured in open waters above state-owned aquatic lands away from a fixed moorage facility that is connected to the shoreline, nor be moored, anchored, or otherwise secured to any natural feature in the water or on the shoreline, except within an open water moorage and anchorage area. A vessel used for residential use or floating house may moor in areas prohibited by this subsection (8)(a) when necessary because of an emergency that immediately threatens human life or property, for the duration of the emergency only.

(b) Any vessel used for residential use or floating house that is moored on state-owned aquatic lands on the effective date of this rule, and complies with all other applicable laws and all lease requirements, but does not comply with (a) of this subsection, may remain until one year after the effective date of this rule or until the termination date of the existing department lease, whichever is later. Thereafter, unless at that time it meets the conditions in (a) of this subsection, the vessel used for residential use or floating house must vacate the site. The department shall not authorize or reauthorize any moorage for vessels used for residential use or floating houses that do not comply with (a) of this subsection.

[Statutory Authority: RCW 79.90.455, 79.90.460. 02-21-076 (Order 710), § 332-30-171, filed 10/17/02, effective 11/17/02.]

Chapter 332-32 WAC
INSECT AND WORM CONTROL

WAC

332-32-010	Spruce budworm—Klickitat and Yakima counties.
332-32-020	Hemlock looper—Pacific and Wahkiakum counties.
332-32-030	European pine shoot moth—Walla Walla County.

WAC 332-32-010 Spruce budworm—Klickitat and Yakima counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . .

(1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Klickitat and Yakima counties, to be known as Simcoe Butte Infestation Control District No. 3, and shall include lands within the following boundary:

Those portions of Township 6 North, Range 14 East, W.M., Townships 5, 6, and 7 North, Range 15 East, W.M., and Townships 5 and 6 North, Ranges 16 and 17 East, W.M., included in a tract described as follows:

Beginning at the northeast corner of Section 25, Township 7 North, Range 15 East, W.M., and running thence westerly along the north lines of Sections 25, 26, 27, 28, and 29, Township 7 North, Range 15 East, W.M., to the northwest corner of said Section 29, thence southerly along the west lines of Sections 29 and 32, Township 7 North, Range 15 East, W.M., to the north line of Section 6, Township 6 North, Range 15 East, W.M., thence easterly along said north line to the northeast corner of said Section 6, thence southerly along the east line of said Section 6 to the southeast corner thereof, thence westerly along the south line of said Section 6 and the north line of Section 12, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 12, thence southerly along the west line of said Section 12 to the southwest corner thereof, thence westerly along the north lines of Sections 14 and 15, Township 6 North, Range 14 East, W.M., to the northwest corner of said Section 15, thence southerly along the west lines of Sections 15, 22, 27, and 34, Township 6 North, Range 14 East, W.M., to the southwest corner of said Section 34, thence easterly along the south lines of Sections 34, 35, and 36, Township 6 North, Range 14 East, W.M., to the southeast corner of said Section 36, thence continue easterly along the south lines of Sections 31 and 32, Township 6 North, Range 15 East, W.M., to the northwest corner of Section 4, Township 5 North, Range 15 East, W.M., thence southerly along the west lines of Sections 4 and 9, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 9, thence easterly along the south line of said Section 9 to the southeast corner thereof, thence southerly along the west lines of Sections 15 and 22, Township 5 North, Range 15 East, W.M., to the southwest corner of said Section 22, thence easterly along the south lines of Sections 22, 23, and 24, Township 5 North, Range 15 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south lines of Sections 19, 20, 21, 22, 23, and 24, Township 5 North, Range 16 East, W.M., to the southeast corner of said Section 24, thence continue easterly along the south line of Section 19, Township 5 North, Range 17 East, W.M., to the southeast corner of said Section 19, thence northerly along the east lines of Sections 19, 18, 7, and 6, to the northeast corner of said Section 6, thence continue northerly along the east lines of Sections 31, 30, and 19, Township 6 North, Range 17 East, W.M., to the northeast corner of said Section 19, thence westerly along the north line of said Section 19 to the northwest corner thereof, thence continue westerly along the north lines of Sections 24, 23, 22, 21, and 20, Township 6 North, Range 16 East, W.M., to the northwest corner of said Section 20, thence northerly along the east line of Section 18, Township 6 North, Range 16 East, W.M., to the northeast corner thereof, thence westerly along the north line of said Section 18 to the northwest corner thereof, thence along the east lines of Sections 12 and 1, Township 6 North, Range 15 East, W.M., to the northeast corner of said Section 1, and thence continue northerly along the east lines of Sections 36 and 25, Township 7 North, Range 15 East, W.M., to the northeast corner of said Section 25 and the point of beginning, containing an area of 81,272.49 acres according to the government surveys thereof.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy and eradicate the spruce budworm (choristoneura fumiferana) by spraying DDT insecticide on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent

shall fail, refuse, neglect or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed with the control, eradication, and destruction of the spruce budworm (choristoneura fumiferana), with or without the cooperation of the owner, by aerial spraying with DDT the forests infected or threatened with infection by this insect pest.

(4) The Simcoe Butte infestation control district shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Resolution No. 29, filed 1/12/62.]

WAC 332-32-020 Hemlock looper—Pacific and Wahkiakum counties. Be it resolved by the board of natural resources, department of natural resources, state of Washington: . . .

(1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of said insect in Pacific and Wahkiakum Counties, to be known as Willapa infestation control district No. 4, and shall include lands within the following boundary:

Those portions of Townships 9 North in Ranges 7, 8, 9, and 10 West, W.M., lying north of the Columbia River; All of Townships 10 North, in Ranges 7, 8, 9, and 10 West, W.M.; Sections 1, 11, 12, 13, 14, 23, 24, 25, 26, 35, and 36, Township 10 North, Range 11 West, W.M.; All of Townships 11 North in Ranges 7, 8, 9, and 10 West, W.M.; Those portions of Township 11 North, Range 11 West, W.M., located on Long Island In Willapa Bay; All of Townships 12 North in Ranges 8, 9, and 10 West, W.M.; Those portions of Township 12 North, Range 11 West, W.M., located on Long Island; and All of Townships 13 North in Ranges 8, 9, and 10 West, W.M.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the hemlock looper (lambdina fiscellaria lugubrosa hulst) by spraying DDT or other insecticides approved by the administrator of the department of natural resources on the forests infested or threatened with infection by this insect pest.

(3) If within 30 days after notice has been given as prescribed in subsection 2 of this resolution, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed, with the control, eradication, and destruction of the hemlock looper (lambdina fiscellaria lugubrosa hulst), with or without the cooperation of the owner.

(4) The Willapa infestation control district No. 4 shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Resolution No. 37, filed 3/6/63.]

WAC 332-32-030 European pine shoot moth—Walla Walla County. (1) The board declares and certifies an infestation control district be established for the control, destruction, and eradication of European Pine Shoot Moth (Rhyacionia buoliana (Schiff.)) in Walla Walla County, to be known as the Walla Walla Infestation Control District, and shall include all the lands within said county.

(2) The administrator of the department of natural resources is directed to serve notice upon all owners of timber lands or their agents (in the manner prescribed by law) to proceed without delay to control, destroy, and eradicate the European Pine Shoot Moth by fumigating or by destroying each infested tree or shrub.

(3) If within thirty days after notice has been given as prescribed in subsection (2) of this section, an owner or agent shall fail, refuse, neglect, or is unable to comply with the terms thereof, the administrator of the department of natural resources shall proceed, as prescribed, with the control, eradication, and destruction of the European Pine Shoot Moth, with or without the cooperation of the owner.

(4) The Walla Walla infestation control district shall remain in effect until the board of natural resources has determined that the insect control work within said district is no longer necessary or feasible, whereupon the board of natural resources may by resolution dissolve the district.

[Order 5, § 332-32-030, filed 3/8/68.]

Chapter 332-36 WAC
ROAD RULES ON STATE OWNED LANDS

WAC

332-36-010 State land management roads.

WAC 332-36-010 State land management roads. Be it resolved . . . . .

(1) All roads now existing on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are not presently under the jurisdiction or control of any individual, public or private corporation, the United States, or the state or agency or subdivision thereof other than the department of natural resources, or which roads are not presently the subject of an application to the department of natural resources for a right of way under RCW 79.01.332 or 79.36.290, made prior in time to an application made by the department of natural resources, by an individual, public or private corporation, the United States, or the state or an agency or subdivision thereof other than the department of natural resources, are designated, and included, as a part of state land management roads, under the jurisdiction and control of the department of natural resources.

(2) All roads now existing or hereinafter constructed on lands owned by the state of Washington under the jurisdiction of the department of natural resources, which roads are presently or hereinafter shall come under the jurisdiction or control of any individual, public or private corporation, the United States, or state or agency or subdivision thereof other than the department of natural resources, and which roads are thereafter conveyed to, abandoned, forfeited, or otherwise returned to the jurisdiction of or received by the department of natural resources, shall be designated and included as a

part of state land management roads under the jurisdiction and control of the department of natural resources.

(3) All roads hereinafter constructed by the department of natural resources, or constructed in conjunction with the sale of timber or other valuable material located on the lands under the jurisdiction of the department of natural resources, shall be designated and included as a part of state land management roads under the jurisdiction and control of the department of natural resources.

(4) Whenever the department of natural resources finds that the use of any roads which make up a part of the said state land management roads by parties other than the department of natural resources will not unreasonably interfere with the department's needs, the department shall upon request by said parties authorize use of the roads described in subsections (1), (2), and (3) of this resolution. Said land management roads shall be under the jurisdiction and control of the department of natural resources, and any use thereof as hereinbefore authorized, shall be subject to the rules and regulations as prescribed by said agency.

(5) The department of natural resources is directed to accomplish all requirements necessary to carry out the policy contained in this resolution.

[Resolution 35, filed 10/16/62.]

Chapter 332-41 WAC
SEPA POLICIES AND PROCEDURES

WAC

332-41-010 Authority.
332-41-020 Adoption by reference.
332-41-030 Purpose.
332-41-040 Additional definitions.
332-41-055 Timing of the SEPA process.
332-41-310 Threshold determination required.
332-41-350 Mitigated DNS.
332-41-420 EIS preparation.
332-41-504 Availability and costs of environmental documents.
332-41-508 Notice of environmental documents.
332-41-510 Public notice requirements.
332-41-665 Policies and procedures for conditioning or denying permits or other approvals.
332-41-833 Timber sales categories.
332-41-910 Designation of responsible official.
332-41-920 Agencies with environmental expertise.
332-41-950 Severability.

WAC 332-41-010 Authority. These rules are promulgated under RCW 43.21C.120 (the State Environmental Policy Act) and chapter 197-11 WAC (SEPA rules).

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-010, filed 9/5/84. Formerly WAC 332-40-010.]

WAC 332-41-020 Adoption by reference. The department of natural resources adopts the following sections or subsections of chapter 197-11 WAC by reference.

WAC

197-11-040 Definitions.
197-11-050 Lead agency.
197-11-055 Timing of the SEPA process.
197-11-060 Content of environmental review.
197-11-070 Limitations on actions during SEPA process.
197-11-080 Incomplete or unavailable information.
197-11-090 Supporting documents.
197-11-100 Information required of applicants.
197-11-300 Purpose of this part.
197-11-305 Categorical exemptions.
197-11-315 Environmental checklist.
197-11-330 Threshold determination process.
197-11-335 Additional information.
197-11-340 Determination of nonsignificance (DNS).
197-11-350 Mitigated DNS.
197-11-360 Determination of significance (DS)/initiation of scoping.
197-11-390 Effect of threshold determination.
197-11-400 Purpose of EIS.
197-11-402 General requirements.
197-11-405 EIS types.
197-11-406 EIS timing.
197-11-408 Scoping.
197-11-410 Expanded scoping. (Optional)
197-11-425 Style and size.
197-11-430 Format.
197-11-435 Cover letter or memo.
197-11-440 EIS contents.
197-11-442 Contents of EIS on nonproject proposals.
197-11-443 EIS contents when prior nonproject EIS.
197-11-444 Elements of the environment.
197-11-448 Relationship of EIS to other considerations.
197-11-450 Cost-benefit analysis.
197-11-455 Issuance of DEIS.
197-11-460 Issuance of FEIS.
197-11-500 Purpose of this part.
197-11-502 Inviting comment.
197-11-535 Public hearings and meetings.
197-11-545 Effect of no comment.
197-11-550 Specificity of comments.
197-11-560 FEIS response to comments.
197-11-570 Consulted agency costs to assist lead agency.
197-11-600 When to use existing environmental documents.
197-11-610 Use of NEPA documents.
197-11-620 Supplemental environmental impact statement—Procedures.
197-11-625 Addenda—Procedures.
197-11-630 Adoption—Procedures.
197-11-635 Incorporation by reference—Procedures.
197-11-640 Combining documents.
197-11-650 Purpose of this part.
197-11-655 Implementation.
197-11-660 Substantive authority and mitigation.
197-11-680 Appeals.
197-11-700 Definitions.
197-11-702 Act.
197-11-704 Action.
197-11-706 Addendum.
197-11-708 Adoption.
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197-11-712 Affecting.
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197-11-722 Consolidated appeal.
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197-11-730 Decision maker.
197-11-734 Determination of nonsignificance (DNS).

197-11-736 Determination of significance (DS).
197-11-738 EIS.
197-11-740 Environment.
197-11-742 Environmental checklist.
197-11-744 Environmental document.
197-11-746 Environmental review.
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197-11-750 Expanded scoping.
197-11-752 Impacts.
197-11-754 Incorporation by reference.
197-11-756 Lands covered by water.
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197-11-760 License.
197-11-762 Local agency.
197-11-764 Major action.
197-11-766 Mitigated DNS.
197-11-768 Mitigation.
197-11-770 Natural environment.
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197-11-880 Emergencies.
197-11-890 Petitioning DOE to change exemptions.
197-11-900 Purpose of this part.
197-11-912 Procedures on consulted agencies.
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[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-020, filed 9/5/84.]

WAC 332-41-030 Purpose. This chapter implements the statewide rules in chapter 197-11 WAC as they apply to the department of natural resources.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-030, filed 9/5/84. Formerly WAC 332-40-020.]

WAC 332-41-040 Additional definitions. In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) Assistant area manager means a principal assistant to an area manager with responsibility for either area governmental or proprietary programs.

(2) Area manager means the person responsible for the administration of a geographic field unit, as designated by the organization plan of the department.

(3) Commissioner means the commissioner of public lands who is the administrator of the department of natural resources as established by chapter 43.30 RCW.

(4) Department means the Washington state department of natural resources.

(5) Division means any one of the eleven principal units of the department's headquarters staff administering a program.

(6) Division manager means the person with overall responsibility for the functioning of one of the eleven divisions.

(7) Environmental coordinator means the person who coordinates SEPA compliance procedures for the department.

(8) Public lands mean state forest lands as described in chapter 76.12 RCW, and lands belonging to or held in trust by the state of Washington as described in RCW 79.01.004.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-040, filed 9/5/84. Formerly WAC 332-40-040.]

WAC 332-41-055 Timing of the SEPA process. (1) Distribution to planning commissions and advisory bodies. Environmental documents required to be submitted to the department of ecology under provisions of WAC 332-41-508 will also be submitted to affected planning commissions and similar advisory bodies within the respective time frames as established by these rules and chapter 197-11 WAC.

(2) Timing of review of proposals. Environmental reviews will be made upon receipt of a completed permit application and environmental checklist.

(3) Additional timing considerations.

(a) Department staff receiving a completed permit application and environmental checklist should determine whether DNR or another agency is SEPA lead agency (see WAC 197-

11-050 and 197-11-922 through 197-11-940) within five working days. If DNR is not the lead agency, the staff person shall notify the environmental coordinator, who will send the completed environmental checklist, and a copy of the permit application, to the lead agency, and an explanation of the determination to the identified lead agency.

(b) Department staff receiving a permit application will determine whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an action and is not exempt, the staff person will ask the applicant to complete an environmental checklist. A checklist is not needed if the department and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application.

(c) If the department's action is a decision on a permit that requires detailed project plans and specifications, the department shall provide, upon request by the applicant, preliminary environmental review prior to submittal of detailed plans and specifications. This preliminary review will be advisory only and not binding on the department. Final review and determination will be made only upon receipt of detailed project plans and specifications if these are essential to a meaningful environmental analysis.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-055, filed 9/5/84. Formerly WAC 332-40-055.]

WAC 332-41-310 Threshold determination required. (1) A threshold determination is required for any proposal which meets the definition of action and is not categorically exempt.

(2) The responsible official of the department shall make the threshold determination, which shall be made as close as possible to the time an agency has developed or is presented with a proposal (WAC 197-11-784).

(3) In most cases, the time to complete a threshold determination should not exceed fifteen days, except for Class IV - special forest practices, in which case the threshold determination will be made within ten days. Complex proposals, those where additional information is needed, and/or those accompanied by an inaccurate checklist may require additional time. Upon request by an applicant, the responsible official shall select a date for making the threshold determination and notify the applicant of such date in writing.

(4) All threshold determinations shall be documented in:

(a) A determination of nonsignificance (DNS) (WAC 197-11-340); or

(b) A determination of significance (DS) (WAC 197-11-360).

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-310, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-350 Mitigated DNS. (1) An applicant may ask the department whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the department is lead agency; and

(c) Precede the department's actual threshold determination for the proposal.

(2) The responsible official or designee shall respond to the request within ten working days of receipt of the letter; the response shall:

(a) Be written;

(b) State whether the department is considering issuance of a DS;

(c) Indicate the general or specific area(s) of concern that led the department to consider a DS; and

(d) State that the applicant may change or clarify the proposal to mitigate the impacts indicated in the letter, revising the environmental checklist as necessary to reflect the changes or clarifications.

(3) The department shall not continue with the threshold determination until receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(4) If the applicant submits a changed or clarified proposal, along with a revised environmental checklist, the department will make its threshold determination based on the changed or clarified proposal.

(a) If the department's response to the request for early notice indicated specific mitigation measures that would remove all probable significant adverse environmental impacts, and the applicant changes or clarifies the proposal to include all of those specific mitigation measures, the department shall issue a determination of nonsignificance and circulate the DNS for comments as in WAC 197-11-350(2).

(b) If the department indicated general or specific areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the department shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(5) The department may specify mitigation measures that would allow it to issue a DNS without a request for early notice from an applicant. If it does so, and the applicant changes or clarifies the proposal to include those measures, the department shall issue a DNS and circulate it for review under WAC 197-11-350(2).

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the department may require the applicant to submit a new checklist.

(7) The department may change or clarify features of its own proposals before making the threshold determination.

(8) The department's written response under subsection (2) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarification of or changes to a proposal, as opposed to a written request for early notice, shall not bind the department to consider the clarification or changes in its threshold determination.

(9) When an applicant submits a changed or clarified proposal pursuant to this section, it shall be considered part of the applicant's application for a permit or other approval for all purposes, including enforcement of the permit or other

approval. Unless the department's decision expressly states otherwise, when a mitigated DNS is issued for a proposal, any decision approving the proposal shall be based on the proposal as changed or clarified pursuant to this section.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-350, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-420 EIS preparation. For draft and final EISs and SEISs:

(1) Preparation of the EIS is the responsibility of the department, by or under the direction of its responsible official, as specified by the department's procedures. No matter who participates in the preparation of the EIS, it is the EIS of the department. The responsible official, prior to distributing an EIS, shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The department may have an EIS prepared by department staff, an applicant or its agent, or by an outside consultant retained by either an applicant or the department. The department shall assure that the EIS is prepared in a professional manner and with appropriate interdisciplinary methodology. The responsible official shall direct the areas of research and examination to be undertaken as a result of the scoping process, as well as the organization of the resulting document.

(3) If a person other than the department is preparing the EIS, the department shall:

(a) Coordinate any scoping procedures so that the individual preparing the EIS receives all substantive information submitted by any agency and the public that is needed by the person;

(b) Assist in obtaining any information on file with another agency that is needed by the person preparing the EIS;

(c) Allow any party preparing an EIS access to all public records of the department that relate to the subject of the EIS, under chapter 42.17 RCW (public disclosure and public records law).

(4) Normally, the department will prepare EISs for its own proposals.

(5) For applicant proposals, the department normally will require the applicant to prepare or help prepare the EIS at the applicant's expense, under provisions of these rules and chapter 197-11 WAC.

(6) The department may require an applicant to provide information that the department does not possess, including specific investigations. The applicant is not required to supply information that is not required under these rules.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-420, filed 9/5/84. Formerly WAC 332-40-420.]

WAC 332-41-504 Availability and costs of environmental documents. (1) SEPA documents required by these rules shall be retained by the department at the SEPA public information center, and made available in accordance with chapter 42.17 RCW.

(2) The department shall make copies of environmental documents available in accordance with chapter 42.17 RCW, charging only those costs allowed plus mailing costs. Allowable costs for environmental documents may be indicated in the documents and made payable to the department. However, no charge shall be levied for circulation of documents to other agencies as required by these rules. If requested, the department will normally waive the charge for an environmental document provided to a public interest organization.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-504, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-508 Notice of environmental documents. (1) The department shall submit environmental documents required to be sent to the department of ecology for weekly publication in the SEPA register under these rules, specifically:

(a) DNSs under WAC 197-11-340(2);

(b) DSs (scoping notices) under WAC 197-11-408;

(c) EISs under WAC 197-11-455, 197-11-460, 197-11-620, and 197-11-630; and

(d) Notices of action under RCW 43.21C.080 and 43.21C.087.

(2) The department shall submit the environmental documents listed in subsection (1) of this section promptly and in accordance with procedures established by the department of ecology.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-508, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-510 Public notice requirements. (1) The department shall give public notice when issuing a DNS under WAC 197-11-340(2), a mitigated DNS under WAC 332-41-350, a scoping notice under WAC 332-41-360, or a draft EIS under WAC 197-11-455.

(2) Whenever possible, the department shall integrate the public notice required under this section (WAC 197-11-340, 197-11-360, 197-11-455, 197-11-502, and 197-11-535) with existing notice procedures for the department's permit or approval required for the proposal.

(3) The department shall use one or more of the following reasonable methods of public notice, taking into consideration the geographic area affected by the proposal, the size and complexity of the proposal, the public notice requirements for the permit or approval required from the department, public interest expressed in the proposal, and whether the proposal is a project or regulation:

(a) Notifying persons or groups who have expressed interest in the proposal, that type of proposal, or proposals in the geographic area in which the proposal will be implemented if approved;

(b) Publication in a newspaper of general circulation in the area in which the proposal will be implemented; and/or

(c) Posting the property.

(4) The department may require an applicant to perform the public notice requirement at his or her expense.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-510, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-665 Policies and procedures for conditioning or denying permits or other approvals. (1) Policies

- specific. The department adopts the following SEPA policies:

(a) Geothermal resources. The department recognizes the need to protect the public from geothermal drilling effects such as the contamination of the ground water, the surface water, the possibility of a blowout, fire hazards, drilling fluids, and surface disturbance. The department may, when necessary, condition the following actions to mitigate specific adverse environmental impacts:

(i) Location of the well;

(ii) Casing program;

(iii) Makeup of drilling fluids.

(b) Surface mining. To provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and restoration, the following aspects of surface mining may be conditioned:

(i) Proposed practices to protect adjacent surface resources;

(ii) Specifications for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(iii) Matter and type of revegetation or other surface treatment of disturbed areas;

(iv) Method of prevention or elimination of conditions that will create a public nuisance, endanger public safety, damage property, or be hazardous to vegetative, animal, fish, or human life in or adjacent to the area;

(v) Method of control of contaminants and disposal of surface mining refuse;

(vi) Method of diverting surface waters around the disturbed areas;

(vii) Method of restoration of stream channels and stream banks to a condition minimizing erosion and siltation and other pollution.

(c) Upland right of way grants. Recognizing that construction and/or reconstruction under upland right of way grants can create adverse impacts to the elements of the environment, it is the policy of the department to condition grants where necessary:

(i) To protect all surface resources including but not limited to soil and water, through authorized right of way operations on public lands, and to cause rehabilitation or reestablishment on a continuing basis the vegetative cover, soil stability and water condition appropriate to intended subsequent use of the area;

(ii) To meet air quality standards; and

(iii) To protect recreational and special use areas under lease by requiring mitigating action.

(d) Marine lands. In managing state-owned aquatic lands, the department shall consider the natural values of state-owned aquatic land such as wildlife habitat, natural area preserves, representative ecosystems, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values or may provide within any lease for the protection of such values.

(e) Public lands leases and contracts. Under authority granted by chapters 76.12, 79.01, 79.08, 79.12, 79.14, and 79.28 RCW, the department has authority to set terms and conditions in granting a lease or contract as long as such terms and conditions are not inconsistent with state law. For public lands, the department may condition or withhold a lease or contract where significant adverse environmental impacts associated with a lease proposal or contract proposal will occur.

(f) Timber sales. Department policies for the sale of timber from public lands are found in the Forest Resource Plan, adopted July 1992.

(g) Forest practices. A Class IV-Special forest practice approval will be conditioned when necessary to mitigate specific adverse impacts which are identified in the environmental documents prepared under SEPA. An application for a Class IV-Special forest practice will be denied when the proposal would result in significant adverse impacts identified in a final or supplemental environmental impact statement prepared under SEPA, and reasonable mitigation measures are insufficient to mitigate the identified impacts and denial is consistent with chapters 43.21C and 76.09 RCW and chapter 197-11 WAC.

(h) Fire control.

(i) Burning permits. The department may condition or deny the issuance of a burning permit for the protection of life, property, or air quality standards.

(ii) Dumping permits. The department may condition or deny the issuance of a dumping permit for the protection of forest lands from fire.

(2) Policies - general. The policies set out in subsection (1) of this section do not anticipate all situations which may result in placing conditions on a permit or denial of a proposal, following environmental review. The department therefore adopts the policies set forth in the State Environmental Policy Act, RCW 43.21C.020, as further basis for conditioning or denying a public or private proposal under SEPA. Those policies are to:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) Decisions to condition or deny.

(a) When the environmental document for a proposal shows it will cause adverse impacts that the proponent does not plan to mitigate the decision maker shall consider whether:

(i) The environmental document identifies mitigation measures that are reasonable and capable of being accomplished;

(ii) Other local, state, or federal requirements and enforcement would mitigate the significant adverse environmental impacts; and

(iii) Reasonable mitigation measures are sufficient to mitigate the adverse impacts.

(b) The decision maker may:

(i) Condition the approval for a proposal if mitigation measures are reasonable and capable of being accomplished and the proposal, without such mitigation measures, is inconsistent with the policies in subsections (1) and (2) of this section;

(ii) Deny the permit or approval for a proposal if reasonable mitigation measures are insufficient to mitigate significant adverse environmental impacts and the proposal is inconsistent with the policies in subsections (1) and (2) of this section.

(iii) The procedures in WAC 197-11-660 must be followed when conditioning or denying permits or other approvals.

[Statutory Authority: RCW 43.21C.120 and chapter 34.05 RCW. 93-01-126 (Order 607), § 332-41-665, filed 12/21/92, effective 1/21/93. Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-665, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-833 Timber sales categories. (1) Under the provisions of WAC 197-11-830(7) the department may determine which decisions to sell timber from public lands do not have potential for significant impact on the environment. Such decisions are categorically exempt from the threshold determination and EIS requirements of SEPA under WAC 197-11-830(7). This determination applies only to public lands.

(2) The department determines that such decisions to sell timber from public lands do not have potential for a significant impact on the environment if they are sales appraised by the department at an amount not exceeding the amount specified in RCW 79.01.200 as the upper limit for sale under terms and conditions prescribed by the department, and if such sales, other than thinning or salvage sales, do not involve harvest units larger than twenty acres. These sales are small sales not requiring approval by the board of natural resources and have low volume and low acreage. The department has not extended this determination to sales requiring approval by the board because of the public values associated with public lands. However, this determination is not intended to alter the department's SEPA compliance responsibility for regulatory decisions concerning forest practice applications for state and private lands under RCW 76.09.050 and WAC 222-16-050.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-833, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-910 Designation of responsible official. The responsible official for a specific proposal shall be a division manager or designated area manager or assistant area manager. The responsible official for the harbor line commission shall be the manager of the marine land management division.

(1) Each division manager or designee shall review the environmental checklists under the division's authority and determine if the department is the lead agency. When the department is not the lead agency, the environmental checklists shall be forwarded to the environmental coordinator for processing under procedures set forth in WAC 197-11-924.

(2) When the department is the lead agency, the responsible division manager or designee will review the environmental checklists and make the threshold determinations under the provisions of WAC 197-11-330.

(3) The division manager or designee shall carry out further SEPA compliance under WAC 197-11-340, 197-11-350, or 197-11-360, as appropriate.

(4) When an environmental impact statement is required based on the threshold determination, scoping and EIS preparation under chapter 197-11 WAC shall begin under direction of the responsible official.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-910, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-920 Agencies with environmental expertise. In addition to those agencies listed under WAC 197-11-920(7), the oil and gas conservation committee shall be regarded as possessing special expertise relating to oil and gas.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-920, filed 9/5/84. Formerly chapter 332-40 WAC.]

WAC 332-41-950 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: Chapter 43.21C RCW and RCW 43.30.150. 84-18-052 (Order 432), § 332-41-950, filed 9/5/84. Formerly chapter 332-40 WAC.]

Chapter 332-52 WAC
MANAGED LANDS AND ROADS—USE OF

WAC

332-52-010 Definitions.
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332-52-040 Public behavior—Recreation sites.
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332-52-069 Milwaukee Road Corridor—Penalties.
332-52-070 Penalties.
332-52-080 Enforcement.
332-52-090 Effective dates.

WAC 332-52-010 Definitions. The following definitions shall apply throughout this chapter:

(1) "Developed recreation sites" means all improved observation, swimming, boating, camping and picnic sites.

(2) "Camping equipment" includes tent or vehicle used to accommodate the camper, the vehicles used for transport, and the associated camping paraphernalia.

(3) "Department" means the department of natural resources.

(4) "Vehicle" means any motorized device capable of being moved upon a road and in, upon, or by which any persons or property is or may be transported or drawn upon a road. It shall include, but not be limited to automobiles, trucks, motorcycles, motor bikes, motor-scooters and snowmobiles, whether or not they can legally be operated on the public highways.

(5) "Organized event" means any event involving more than fifty participants which is advertised in advance, sponsored by any recognized club(s), and conducted at a predetermined time and place.

(6) "Corridor" means that portion of the Milwaukee Road Corridor under the jurisdiction of the department.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-010, filed 8/27/87; 84-21-038 (Order 435), § 332-52-010, filed 10/11/84. Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW. 79-06-039 (Order 313), § 332-52-010, filed 5/18/79; Order 29, § 332-52-010, filed 4/17/70, effective 5/20/70.]

WAC 332-52-020 Applicability and scope. The following public use rules are aimed at protecting recreational, economic and industrial activities on land and roads under the jurisdiction of the department. These rules are designed to allow Washington's trust lands to fulfill their historic roles of revenue production. The rules cover public use activities on developed recreation sites and all other lands under the jurisdiction of the department. They cover the public use of roads and trails under the jurisdiction of the department and the recreational use of fire. These public use rules are not applicable to persons, or their assignees or representatives, engaged in industrial harvest, commercial leases or agriculture or grazing activities carried on under sale, lease or permit from the department on lands under its jurisdiction if such application is incompatible with state contracts or agreements. Nor shall these rules, except the provisions of WAC 332-52-060, apply on lands under the department's jurisdiction that are withdrawn or leased by a public agency having rules governing public use on the lands withdrawn or leased, provided that these rules may apply upon request of the applicable public agency. Public notices of these rules shall be posted by the department in such locations as will reasonably bring them to the attention of the public. The department will also set forth conditions with respect to any areas on which special restrictions are imposed and post in same manner. A copy of the rules shall be made available to the public in the office of the commissioner of public lands, Olympia, and in region offices.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-020, filed 8/27/87; 84-21-038 (Order 435), § 332-52-020, filed 10/11/84; Order 29, § 332-52-020, filed 4/17/70, effective 5/20/70.]

WAC 332-52-030 General rules. The following acts or omissions are prohibited on any lands under the jurisdiction of the department of natural resources:

(1) Sanitation

(a) Disposal of all garbage, including paper, cans, bottles, waste materials and rubbish except by removal from the area, or disposal at designated disposal areas.

(b) Draining or dumping refuse or waste from any trailer, car or other vehicle except in designated disposal areas.

(c) Cleaning fish or food, or washing clothing or articles for household use in any drinking water source.

(d) Polluting or contaminating water through failure to use due and reasonable care with regard to activities involving lakes, streams or other sources of water.

(e) Depositing, except into receptacles provided for that purpose, any body waste in or on any portion of any comfort station or any public structure, or upon the ground, or depositing any bottles, cans, cloths, rags, metal, wood, stone or any other damaging substance in any of the fixtures in such stations or structures.

(f) Using refuse containers or other refuse facilities for dumping household or commercial garbage or trash brought as such from private property.

(2) Public behavior

(a) Inciting or participating in riots, or indulging in abusive, threatening or indecent conduct or indulging in conduct that destroys the normal recreational experience of other users. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(b) Destroying, injuring, defacing, removing or disturbing in any manner any public building, sign, equipment, marker or other structure or property.

(c) Selling or offering for sale any merchandise without the written consent of the department of natural resources.

(d) Posting, placing or erecting any bills, notices, papers or advertising devices or matter of any kind without the written consent of the department of natural resources.

(e) Erecting or using unauthorized buildings. Persons violating this rule may be evicted from lands under the jurisdiction of the department of natural resources.

(f) Exploding or igniting firecrackers, rockets or fireworks of any kind.

(3) Audible devices

(a) Operating or using any audible devices, including radio, television and musical instruments and other noise producing devices, such as electrical generating plants and equipment driven by motors or engines, in such a manner and at such times so as to unreasonably disturb other persons.

(b) Operating or using portable public address system, whether fixed, portable, or vehicle mounted, except when such use or operation has been approved by the department in writing.

(4) Vehicles and road use

It is the policy of the department of natural resources to encourage public use of all roads and trails, land and water under its jurisdiction consistent with its trust responsibilities, conservation of soil and water, timber and grass and the natural environment, while maintaining a reasonable balance between the proper needs of conflicting user groups. Therefore, the following rules shall pertain to all lands under the jurisdiction of the department of natural resources and to all access roads across private lands through which the department has obtained the right of public use. Rules and regulations bearing upon recreational access to department managed lands and roads may be waived (in writing) by the department for special situations provided that the events are consistent with the above department policy.

(a) Vehicles may travel over all roads adequate for conventional 2-wheel drive passenger automobiles unless posted against such use.

(b) Roads, abandoned railway grades, skid roads, and similar routes inadequate for conventional 2-wheel drive automobiles and all trails are closed to vehicular use unless designated or posted as open for such use.

(c) Vehicular travel off-road or off-trails is prohibited except in areas designated or posted by the department as open for vehicular travel.

(d) Snowmobiles may travel over roads and trails on department managed lands except where posted against such use.

(e) Snowmobiles are prohibited from off-roads and off-trails travel except in areas designated or posted as open by the department.

(f) All regulations having to do with safety, noise abatement, speed and fire precautions which apply to other motorized vehicles in developed recreation sites or on other lands managed by the department shall apply to snowmobiles provided that: One headlight in working order shall be deemed sufficient lighting system for snowmobiles.

(g) Operating a motor vehicle at any time without a muffler in good working order or operating a vehicle in such a manner as to create excessive or unusual noise or annoying smoke or using a muffler, cutoff, bypass or similar device or operating a motor vehicle with an exhaust system that has been modified so that the noise emitted by the engine of such vehicle is amplified or increased above that emitted by the muffler originally equipped on the vehicle is prohibited.

(h) Every motor vehicle during the "closed season" as defined in RCW 76.04.252 shall be equipped with a spark arresting muffler approved by the supervisor of the department of natural resources whenever such vehicle shall traverse over any state lands other than on roads from which the inflammable vegetation has been cleared of sufficient width to pass a four-wheel vehicle and such road is surfaced with a noninflammable material.

(i) Driving in a careless or negligent manner or driving while under the influence of intoxicating liquors or under the influence of narcotic or hallucinogenic drugs is prohibited.

(j) Headlights must be turned on whenever the visibility is reduced to 200 feet or less due to darkness, dust, smoke, fog or other weather or atmospheric conditions.

(k) Speed limits—The driver shall operate his vehicle at a safe speed at all times and not in excess of any posted speed.

(l) Right of way—The driver of any vehicle, other than an emergency vehicle, shall yield the right of way to log hauling or gravel trucks, except as otherwise provided:

(i) The driver of a vehicle approaching an intersection, not otherwise posted, shall look out for and yield the right of way to any vehicle on his right simultaneously approaching the intersection regardless of which vehicle first reaches and enters the intersection.

(ii) The driver of a vehicle intending to turn to the left shall yield the right of way to any vehicle approaching from the opposite direction.

(iii) The driver of a vehicle shall yield the right of way to animal-drawn vehicles and persons riding animals and shall make reasonable effort to avoid frightening or startling such animals.

(m) Following—A vehicle whose driver does not intend to pass shall not follow another vehicle closer than 150 feet provided that vehicles driven by a single organized group may follow one another at a lesser but reasonable following distance.

(n) Pedestrians' rights and duties—Every driver of a vehicle shall yield the right of way to pedestrians. Pedestrians should clear traffic lanes as soon as practicable.

(o) Animals—Every person in control of an animal or animal-drawn vehicle shall remove same from the roads to allow vehicles to pass as soon as practicable.

Whenever the driver of a vehicle encounters a herd of livestock which is in control of any person, he shall not move through the herd until directed to do so by the person in control of the herd. The person in charge of the herd shall remove the herd from the road or trail as soon as possible.

(p) Drive to avoid damage—No person shall operate any vehicle in such a way as to cause damage to the roads, bridges, cattleguards, gates or other structures or appurtenances which form a part of the road.

(q) Parking—No person shall stop, part or leave standing any vehicle or obstacle upon the main-traveled part of the road; any vehicles otherwise parked must leave sufficient room for the passage of at least normal traffic, provided, that this does not apply to the driver of: (i) A disabled vehicle, (ii) an emergency vehicle, (iii) a fire vehicle.

(r) Engine noise—Excessively accelerating the engine of any type of vehicle when such vehicle is not moving or is starting from a stopping place is prohibited.

[Order 29, § 332-52-030, filed 4/17/70, effective 5/20/70.]

WAC 332-52-040 Public behavior—Recreation sites. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Destroying, defacing or removing any natural feature or vegetation.

(2) Discharging firearms. No person shall discharge across, in, or into any portion of the developed recreation site a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property except where the department has authorized otherwise.

(3) Occupying a site for other than primarily recreational purposes.

(4) Entering or using a site or a portion of a site posted closed to public use.

Notices establishing closure shall be posted in such locations as will reasonably bring them to the attention of the public.

(5) Building a fire outside of stoves, grills, fireplaces or outside of fire rings provided for such purposes.

(6) Camping overnight in places restricted to day use only.

(7) Failure to clean their rubbish from the place occupied by the person or persons before departure.

(8) Pitching tents or parking trailers or other camping equipment except in places provided for such purposes.

(9) Camping within a campground for a longer period of time than that established by the department of natural resources. Notices establishing limitations on the period of

time persons may camp within a campground shall be posted in such locations as will reasonably bring them to the attention of the public. There may be different time limits in the various recreation sites depending upon conditions, time of the year, or available facilities.

(10) Failing to maintain quiet in campground between the hours of 10 p.m. and 6 a.m. All persons shall maintain reasonable quiet, and adults accompanied by children or pets shall be responsible to insure that children and/or pets maintain a reasonable quiet.

(11) Bringing saddle, pack or draft animals into the site unless it has been developed to accommodate them and is posted accordingly.

(12) Bringing pets or other animals into campground unless under physical restrictive control at all times.

(13) Leaving a camp unit unoccupied during the first night after camping equipment has been set up or leaving unattended camping equipment for more than 24 hours. Such unattended camping equipment which is not removed is subject to removal.

[Order 29, § 332-52-040, filed 4/17/70, effective 5/20/70.]

WAC 332-52-050 Vehicles. The following acts or omissions are further prohibited at department of natural resources developed recreation sites:

(1) Driving or parking any vehicle or trailer except in places designed for this purpose.

(2) Driving any vehicle at a speed or in a manner likely to endanger any person or property.

(3) Driving bicycles, motorbikes and motorcycles on trails unless such trails are posted for vehicular traffic.

(4) Driving motorbikes, motorcycles, or other motor vehicles on roads in developed recreation sites for any purpose other than access into, or egress out of, the site unless authorized and posted by the department of natural resources.

[Order 29, § 332-52-050, filed 4/17/70, effective 5/20/70.]

WAC 332-52-055 Capital forest—Organized events—Prohibited without prior written approval. (1) Organized events are prohibited in the capital forest without the prior written approval of the department. Any group or organization desiring to utilize department lands or recreational facilities within the capital forest for an organized event shall make written request at least thirty days in advance of such event to the department's central area office in Chehalis on a form designated by the department for this purpose.

(2) All requests for an organized event in the capital forest shall include the following information:

(a) The name of the group;

(b) The name, address, and telephone number of the designated group representative;

(c) A general description of the organized event;

(d) The location and description of the land and facilities to be used;

(e) The date and time of the organized event;

(f) A legible map clearly delineating the facility and routes to be used and the direction of travel;

(g) The kind of markers, if any, to be used.

(3) The department's central area office shall make a determination regarding the organized event within ten calendar days of receiving a written request by approving, disapproving or conditionally approving the same. The department's determination will be based upon the nature of the proposed use, seasonal factors and other environmental conditions, other known uses of affected areas, and other requests for organized events in the affected vicinity. The department's determination on the request shall be in writing and will explain the basis for any disapproval or conditional approval.

(4) The sponsoring group, in carrying out any organized event, shall, unless specifically waived in writing by the department:

(a) Limit participants to the maximum number specified by the department;

(b) Identify all route markers with the sponsor's name and the date of the use;

(c) Post and maintain signs clearly warning participants and others of any hazardous conditions and all road and trail intersections throughout the entire route;

(d) Post signs to warn nonparticipants of the organized event and the flow of traffic;

(e) Remove all route markers and posted signs within forty-eight hours after completion of the organized event.

[Statutory Authority: RCW 46.09.180 and chapter 77.68 RCW. 79-06-039 (Order 313), § 332-52-055, filed 5/18/79.]

WAC 332-52-060 Use of fire. Chapter 76.04 RCW and all rules and regulations duly promulgated thereunder apply to recreational fires on lands under the jurisdiction of the department other than developed recreation sites. The written permission required under WAC 332-24-201 may be waived for good cause shown for recreational fires by the regional manager in designated areas within his jurisdiction.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-060, filed 8/27/87; 84-21-038 (Order 435), § 332-52-060, filed 10/11/84; Order 29, § 332-52-060, filed 4/17/70, effective 5/20/70.]

WAC 332-52-065 Milwaukee Road Corridor—Recreational use. Motorized vehicles including snowmobiles are prohibited on the corridor at all times, except for motorized use for authorized administrative purposes or motorized use approved by the department for reasons of health and safety. The corridor is open for nonmotorized use, by permit only, year around, east of the Columbia River. The department may close portions of the corridor, at any time of the year, to reduce fire danger or protect public safety after consultation with local legislative authorities and fire districts. After December 31, 2000 the department may, if determined necessary to better carry out the purposes of chapter 174, Laws of 1984, adjust the designated periods of the year during which permits will be issued, after first giving public notice and holding at least one public hearing each in Eastern and Western Washington.

[Statutory Authority: RCW 79.08.277, 79.08.279 and 79.08.281. 99-24-029A (Order 701), § 332-52-065, filed 11/23/99, effective 12/24/99. Statutory Authority: RCW 79.08.277 and 79.08.279. 92-05-036 (Order 577), § 332-52-065, filed 2/11/92, effective 3/13/92; 87-18-035 (Order 516), § 332-52-065, filed 8/27/87; 84-21-038 (Order 435), § 332-52-065, filed 10/11/84.]

WAC 332-52-066 Milwaukee Road Corridor—Permits. (1) Any individual, group or organization wishing to use the corridor shall make written application at least fifteen days in advance of such intended use to the department's southeast region office in Ellensburg on a form designated by the department for this purpose. The department, on request of an applicant, may for good cause shown provide for a shorter period of advance notice.

(2) Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property.

(3) For portions of the corridor where no abutting landowner has requested notification of permits issued and no gates have been constructed by lessees of the corridor, the department may issue permits for day use only without advance application where use is confined to such portion of the corridor. In this case, one permit may be issued which covers such use on any number of days within the use period specified in WAC 332-52-065.

(4) All requests for use of the corridor shall include the following information except for use as specified in subsection (3) of this section:

(a) The name and address of the applicant.

(b) The name, title, address, and telephone number of the group leader.

(c) A brief description of the planned use of the corridor.

(d) The size of the group.

(e) The period of use, including the starting and ending dates.

(f) The locations of the starting point and destination of the proposed trip.

(g) The portions of the corridor planned to be covered each day of the proposed trip.

(h) The mode of travel to be used while on the corridor.

(i) Whether there is to be overnight use of the corridor and if so the location of the overnight use.

(5) The department's southeast region office shall make a determination regarding the application within five working days of receiving the application, and shall notify the applicant in writing of its determination to approve or disapprove the application. All permits shall include appropriate conditions on use including appropriate indemnity and waiver of liability clauses. The department's determination and the conditions included in the permit will be based on providing for the orderly and safe use of the corridor, the protection of adjoining landowners, the nature of the proposed use, environmental conditions, other known uses, and other requests for use.

(6) The permit will be valid for not more than one trip in each direction over the route identified on the application, except as specified in subsection (3) of this section.

(7) A permit fee will be charged, the amount of the fee to be determined by the department and to be based on the cost of processing the permit application plus the cost of notifying adjacent landowners under subsection (2) of this section. The permit fee shall be no greater than one hundred dollars and not less than ten dollars. The permit fee for one person using the corridor for fewer than two nights shall be ten dollars. No fee will be charged for use permitted under subsection (3) of this section or abutting lands owned by the bureau of land management.

(8) While traveling the corridor, the permit must be in the possession of the permit holder at all times. For groups, the permit holder is the person designated on the application as the group leader, or the group leader's designee. The permit holder is required to show the permit, if requested by an authorized department representative.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-066, filed 8/27/87; 84-21-038 (Order 435), § 332-52-066, filed 10/11/84.]

WAC 332-52-067 Milwaukee Road Corridor—Restrictions on use. The following acts are prohibited on the corridor:

(1) Sanitation

(a) Disposal of all garbage or refuse of any kind whatsoever.

(b) Depositing any human waste in a manner which could cause pollution of any surface or ground water or threat to human health. No human waste shall be deposited within one-quarter mile of any building, water source, lake, pond, or stream whether running or dry. In all other cases human waste shall be buried. Permit conditions for groups may include a requirement to remove human waste from the corridor.

(2) Public behavior

(a) Destroying, injuring, defacing, removing, or disturbing in any manner any public or private building, sign, equipment, marker or other structure or property.

(b) Erecting unauthorized shelters, entering any structure without permission, or camping in locations not designated on the permit.

(c) Destroying, defacing, or removing any natural feature or vegetation or the surface of the corridor.

(d) Hunting or discharging of firearms, or having in possession shotguns or rifles. Other firearms will be unloaded and stored. No person shall discharge on any portion of the corridor a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property. However, the department may allow hunting on portions of the corridor leased by or covered by an agreement with another public agency which owns or controls adjoining property.

(e) Exploding or igniting firecrackers, rockets or fireworks of any kind.

(f) Operating or using any audible devices, including public address system, radio, television, and musical instrument and other noise producing devices, such as electrical generating plants and equipment driven by motors or engines, in such a manner and at such times so as to unreasonably disturb other persons.

(g) Building of open fires, without a written burning permit from the department.

(h) Having animals on the corridor which are not under physical restrictive control at all times.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-067, filed 8/27/87; 84-21-038 (Order 435), § 332-52-067, filed 10/11/84.]

WAC 332-52-068 Milwaukee Road Corridor—Protection of adjoining property. The following acts are prohibited:

(1) Entering onto adjoining property from the corridor by any person or animal without permission of landowner.

(2) Destroying, injuring, defacing, removing, or disturbing in any manner any public or private building, sign, equipment, marker, or other structure or property on adjoining property.

(3) Discharging of firearms. No person shall discharge at or onto any adjoining property a firearm, bow and arrow, or air or gas device or any device capable of injuring or killing any animal or person or damaging or destroying any public or private property.

(4) Leaving gates in a condition other than the condition in which they are found.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-068, filed 8/27/87; 84-21-038 (Order 435), § 332-52-068, filed 10/11/84.]

WAC 332-52-069 Milwaukee Road Corridor—Penalties. Any violations of WAC 332-52-065 through 332-52-068, chapter 174, Laws of 1984 or the terms or conditions of the permit shall subject the permittee to the revocation of the permit and the penalties under WAC 332-52-070.

[Statutory Authority: RCW 79.08.277 and 79.08.279. 87-18-035 (Order 516), § 332-52-069, filed 8/27/87; 84-21-038 (Order 435), § 332-52-069, filed 10/11/84.]

WAC 332-52-070 Penalties. Failure to comply with any of the rules set forth in the preceding sections subjects the party or parties to the penalties provided by chapter 160, Laws of 1969 ex. sess., and the loss of access to and exercise of privileges on state-owned lands under the jurisdiction of the department of natural resources for such period of time as the duly authorized representative of the department of natural resources determines.

[Order 29, § 332-52-070, filed 4/17/70, effective 5/20/70.]

WAC 332-52-080 Enforcement. These rules and regulations will be enforced by the commissioner of public lands and such of his employees as he may designate.

(1) Provisions of the above rules and regulations may be waived by written permission by the department of natural resources except for those activities controlled by statute or ordinance. Waivers may be granted when they are determined by the department to be in the best public interest and will result in minimal damage to department managed land or resources.

(2) No rule or regulation adopted for the public use of the department of natural resources managed lands and roads shall interfere with operations conducted for the purpose of the saving of life or property when such operations are directed by the proper authority.

(3) All rules and regulations listed above are adopted by the department of natural resources pursuant to chapter 43.30 RCW.

[Order 29, § 332-52-080, filed 4/17/70, effective 5/20/70.]

WAC 332-52-090 Effective dates. These rules and regulations shall become effective upon the expiration of thirty days after said rules and regulations are filed with the code reviser, except WAC 332-52-030 (4)(a), (b), (c), (d), and (e), which shall become effective August 1, 1970.

[Order 29, § 332-52-090, filed 4/17/70, effective 5/20/70.]

Chapter 332-60 WAC
NATURAL AREAS—NATURAL AREA PRESERVES

WAC

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NATURAL AREA PRESERVE—COOPERATIVE AGREEMENT

332-60-140 Natural area preserve by cooperative agreement.
332-60-150 Cooperative agreement.
332-60-160 Termination of natural area preserve by cooperative agreement.

WAC 332-60-010 Authority. This chapter is promulgated pursuant to the authority granted in RCW 79.70.030 and 79.70.090.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-010, filed 12/7/83.]

WAC 332-60-020 Purpose. The purpose of this chapter is to establish rules for implementing a statewide system of registration of natural areas and creation of natural area preserves.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-020, filed 12/7/83.]

WAC 332-60-030 Invalidity of part of chapter not to affect remainder. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-030, filed 12/7/83.]

WAC 332-60-040 Cooperation with government agencies or private entities. The department may cooperate or contract with any federal, state or local government agency, private organization, or individual, in carrying out the purpose of this chapter.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-040, filed 12/7/83.]

WAC 332-60-050 Definitions. (1) "Department" means the department of natural resources.

(2) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(3) "Plan" means the state of Washington natural heritage plan as established under RCW 79.70.030.

(4) "Natural heritage resource" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the plan.

(5) "Natural area" means a unit of land or water or both which contains a natural heritage resource, and which has been registered by the landowner and may be considered for dedication or commitment as a natural area preserve.

(6) "Natural area preserve" means a natural area which has been:

(a) Dedicated under the provisions of RCW 79.70.090; or

(b) Formally committed to protection by a cooperative agreement between a government landholder and the department.

(7) "Registration" means a voluntary commitment by the landowner for protection of a specific natural heritage resource located on the landowner's land. No real property interest is transferred. Registration is memorialized by a certificate of registration issued by the department.

(8) "Dedication" means the formal recognition and protection of a natural area for natural heritage conservation purposes accomplished by the voluntary transfer by a landowner to the department of an interest in real property less than fee simple.

(9) "Register" means the Washington Register of Natural Area Preserves which lists the sites which have been formally registered, dedicated or formally protected by cooperative agreement, for natural area purposes.

(10) "Instrument of dedication" means a written document intended to convey an interest in real property, pursuant to chapter 64.04 RCW.

(11) "Landowner" means any individual, partnership, private, public, nonprofit, or municipal corporation, city, county, state agency, agency of the United States or any other governmental agency or entity, which exercises control over a natural heritage resource whether such control is based on legal or equitable title, or which manages or holds in trust land in Washington state.

(12) "Government landholder" means any city, municipal corporation, county, state agency, agency of the United States, or any other government agency which manages, owns, holds in trust or otherwise has jurisdiction over land in Washington state.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-050, filed 12/7/83.]

NATURAL AREAS—REGISTRATION

WAC 332-60-060 Site criteria for registration. The criteria for identification for registration are set forth in the plan.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-060, filed 12/7/83.]

WAC 332-60-070 Procedures for registration of natural areas. (1) After a site has been identified, the department or its designee shall notify the landowner, in writing, of the site's natural heritage resource and the site's eligibility for the register.

(2) The department or its designee must obtain from the landowner written permission to proceed with the site evaluation process.

(3) Once permission is granted by the landowner to proceed with the site evaluation process, the department nominates the site to the council.

(4) The council shall review each site nomination and approve or reject registration of the site.

(5) The department shall notify the landowner of the council's determination and, for an approved site, offer the landowner the opportunity to voluntarily place the site on the register.

(6) If the landowner agrees to register the site, the department shall place the site on the register and provide the landowner with a certificate of registration.

(7) The department may offer voluntary management guidelines and may enter into a management agreement with the landowner of a registered natural area.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-070, filed 12/7/83.]

WAC 332-60-080 Removal of a natural area from the register. (1) The department shall remove natural areas from the register at any time:

(i) Upon written request by the landowner to the department; or

(ii) If the council determines that the site is no longer managed for the natural heritage resources present, or the site no longer meets the original criteria for selection.

(2) Landowners are to be notified in writing of removal of a natural area from the register.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-080, filed 12/7/83.]

NATURAL AREA PRESERVE—DEDICATION

WAC 332-60-090 Natural area preserve by instrument of dedication. Upon such terms as the department and landowner agree, a registered natural area may be dedicated as a natural area preserve through the execution of an instrument of dedication in a form approved by the council.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-090, filed 12/7/83.]

WAC 332-60-100 Instrument of dedication—Form. The instrument of dedication shall be in accordance with the requirements of RCW 64.04.130. The instrument of dedication shall be substantially in the form required by law for the conveyance of any land or other real property.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-100, filed 12/7/83.]

WAC 332-60-110 Instrument of dedication—Interest conveyed. The instrument of dedication shall transfer a real property interest for the purpose of providing protection to a natural heritage resource. Interests which may be transferred include, but are not limited to: Water, timber, grazing, development rights, rights to hunt, fish, drain or fill, access easements, or rights of way.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-110, filed 12/7/83.]

WAC 332-60-120 Effective date of dedication. Dedication shall be effective upon the recording of the instrument of dedication in the real property records of the county or counties in which the natural area is located.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-120, filed 12/7/83.]

WAC 332-60-130 Termination of dedication. A dedication shall not be terminable except as provided by the instrument of dedication.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-130, filed 12/7/83.]

NATURAL AREA PRESERVE—COOPERATIVE AGREEMENT

WAC 332-60-140 Natural area preserve by cooperative agreement. A government landholder of a registered natural area may commit the area as a natural area preserve by executing with the department a cooperative agreement in a form approved by the council and upon such terms as the department and government landholder agree.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-140, filed 12/7/83.]

WAC 332-60-150 Cooperative agreement. The cooperative agreement must include a description of the legal or administrative commitment by the government landholder to manage the land for the protection of a natural heritage resource.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-150, filed 12/7/83.]

WAC 332-60-160 Termination of natural area preserve by cooperative agreement. The site may be removed from a natural area preserve status as provided by the cooperative agreement.

[Statutory Authority: RCW 79.70.030 and 79.70.090. 83-24-067 (Order 407), § 332-60-160, filed 12/7/83.]

Chapter 332-100 WAC
LEASES, SALES, RIGHTS OF WAY, ETC.

WAC

332-100-020 Leasing—Priority to public school districts.
332-100-030 Rate of interest for sales.
332-100-040 Deduction determination.
332-100-050 Rate of interest for contracts.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-100-010 Percentage of proceeds to management account. [Resolution No. 16, filed 4/5/61.] Repealed by 78-10-039 (Order 308, Resolution No. 241), filed 9/18/78. Statutory Authority: RCW 79.64.040.

332-100-060 Rate of interest for repayment. [Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-060, filed 8/11/80.] Repealed by 88-22-049 (Resolution No. 600), filed 10/31/88. Statutory Authority: RCW 79.64.030, 43.30.135 and 43.30.150.

WAC 332-100-020 Leasing—Priority to public school districts. Acting under the authority as hereinbefore set forth and RCW 79.01.096, the board of natural resources declares it to be the policy of the department of natural resources to grant priority to public school districts in the leasing of common school lands under the jurisdiction of the department of natural resources: Provided, however, That the needs of such lands for public school purposes is clearly demonstrated and the request is not in excess of actual or reasonably foreseeable needs.

[Resolution No. 32, filed 4/3/62.]

WAC 332-100-030 Rate of interest for sales. The interest rate to be charged on all sales requiring the same pursuant to RCW 79.01.132 shall be twelve percent per annum.

[Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-100-030, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-030, filed 8/11/80; Order 27, § 332-100-030, filed 11/19/69.]

WAC 332-100-040 Deduction determination. (1) The board of natural resources hereby determines that a deduction from the gross proceeds of all leases, sales, contracts, licenses, permits, easements, and rights of way issued by the department of natural resources and affecting public lands as provided for in subsection (2) hereof is necessary in order to achieve the purposes of chapter 79.64 RCW.

(2) The department of natural resources shall deduct the maximum percentages as provided for in RCW 79.64.040 and related statutes except that deductions from the gross proceeds of harbor area leases shall be at twenty percent. Except for transactions involving aquatic lands, harbor areas and trust land categories that have a deficit revenue/expenditure status, the deductions may be temporarily discontinued by a resolution of the board of natural resources at such times as the balance in the resource management cost account exceeds an amount equal to twelve months operating expenses for the department of natural resources or when the board determines such discontinuation is in the best interest of the trust beneficiaries. The board shall specify the trust lands subject to such discontinuation. The duration of such orders shall be for a specified time period calculated to allow a reduction of the resource management cost account balance to an amount approximately equal to three months operating expenses for the department. Operating expense needs will be determined by the board based on pro rata increments of biennial legislative appropriations. All sums so deducted shall be paid into the resource management cost account in the state general fund created by chapter 79.64 RCW.

[Statutory Authority: RCW 79.64.040. 83-11-008 (Order 398, Resolution No. 419), § 332-100-040, filed 5/6/83, effective 6/30/83; 78-10-039 (Order 308, Resolution No. 241), § 332-100-040, filed 9/18/78.]

WAC 332-100-050 Rate of interest for contracts. The interest rate to be charged on all contracts requiring the same pursuant to RCW 79.01.216 shall be the average for thirty year fixed conventional mortgages on the first day of the last full month preceding approval by the board of natural resources. Said rate shall not be less than six percent.

[Statutory Authority: RCW 79.01.132, 79.01.216, 79.90.520, 79.90.535 and 1991 c 64 §§ 1 and 2. 91-22-079 (Order 580), § 332-100-050, filed 11/5/91, effective 12/6/91. Statutory Authority: RCW 79.01.132, 79.01.216 and 79.64.030. 80-11-013 (Order 346, Resolution No. 304), § 332-100-050, filed 8/11/80.]

Chapter 332-110 WAC
LEASES OF STATE OWNED LAND

WAC

332-110-010 Commissioner's authority.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-110-001 Certificate of filing. [Filed 3/2/66.] Decodified 12/31/77.

WAC 332-110-010 Commissioner's authority. It was moved by Governor Rosellini, seconded by Dean Marckworth, and passed, that the commissioner be authorized to administer all leases of state owned lands under the department's direction on the same principle as school grant lands, subject to periodic review and power of intervention by the board.

[Motion No. 78, minutes of April 1, 1958, meeting of board of natural resources (codified as WAC 332-110-010), filed 3/2/66.]

Reviser's note: The above section is an excerpt from the minutes of the April 1, 1958, meeting of the board of natural resources, which were filed in their entirety in order that motion number 78 may be given effect as a rule under the Administrative Procedure Act.

Chapter 332-120 WAC
SURVEY MONUMENTS—REMOVAL OR DESTRUCTION

WAC

332-120-010 Authority.
332-120-020 Definitions.
332-120-030 Applicability.
332-120-040 Monument removal or destruction.
332-120-050 Application process.
332-120-060 Project completion—Perpetuation of the original position.
332-120-070 Application/permit form.

WAC 332-120-010 Authority. The department of natural resources, in accordance with RCW 58.24.030 and 58.24.040 (1) and (8), prescribes the following regulations concerning the removal or destruction of survey monuments and the perpetuation of survey points.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-010, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-010, filed 3/1/72, effective 4/7/72.]

WAC 332-120-020 Definitions. The following definitions shall apply to this chapter:

Department: The department of natural resources.

Engineer: Any person authorized to practice the profession of engineering under the provisions of chapter 18.43 RCW who also has authority to do land boundary surveying pursuant to RCW 36.75.110, 36.86.050, 47.36.010 or 58.09.-090.

Geodetic control point: Points established to mark horizontal or vertical control positions that are part of the National Geodetic Survey Network.

Land boundary survey corner: A point on the boundary of any easement, right of way, lot, tract, or parcel of real property; a controlling point for a plat; or a point which is a General Land Office or Bureau of Land Management survey corner.

Land corner record: The record of corner information form as prescribed by the department of natural resources pursuant to chapter 58.09 RCW.

Land surveyor: Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

Local control point: Points established to mark horizontal or vertical control positions that are part of a permanent government control network other than the National Geodetic Survey network.

Parcel: A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

Removal or destruction: The physical disturbance or covering of a monument such that the survey point is no longer visible or readily accessible.

Survey monument: The physical structure, along with any references or accessories thereto, used to mark the location of a land boundary survey corner, geodetic control point, or local control point.

Survey Recording Act: The law as established and designated in chapter 58.09 RCW.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-020, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-020, filed 3/1/72, effective 4/7/72.]

WAC 332-120-030 Applicability. (1) No survey monument shall be removed or destroyed before a permit is obtained as required by this chapter.

(2) Any person, corporation, association, department, or subdivision of the state, county or municipality responsible for an activity that may cause a survey monument to be removed or destroyed shall be responsible for ensuring that the original survey point is perpetuated. It shall be the responsibility of the governmental agency or others performing construction work or other activity (including road or street resurfacing projects) to adequately search the records and the physical area of the proposed construction work or other activity for the purpose of locating and referencing any known or existing survey monuments.

A government agency, when removing a local control point that it has established, shall be exempted from the requirements of this chapter.

(3) Survey monuments subject to this chapter are those monuments marking local control points, geodetic control points, and land boundary survey corners.

In regard to local or geodetic control points the department will defer authorization for the removal or destruction of the survey monument to the agency responsible for the establishment or maintenance of the control point. Such agency may, at their discretion, exempt the applicant from the remonumentation requirements of this chapter. Such

exemption shall be noted by the agency on the application form.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-030, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-030, filed 3/1/72, effective 4/7/72.]

WAC 332-120-040 Monument removal or destruction. (1) All land boundary survey monuments that are removed or destroyed shall be replaced or witness monuments shall be set to perpetuate the survey point.

(2) A land boundary survey corner shall be referenced to the Washington Coordinate System of 1983, adjusted in 1991, prior to removal or destruction. See WAC 332-130-060, Geodetic control, survey standards.

An applicant may request a variance from this referencing requirement by so noting in the applicant information section on the permit and providing the justification on the back of the form. The department shall note whether the variance is approved or not approved and shall provide the reason for not approving the request.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-040, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-040, filed 3/1/72, effective 4/7/72.]

WAC 332-120-050 Application process. (1) Whenever a survey monument needs to be removed or destroyed the application required by this chapter shall be submitted to the department.

It shall be completed, signed and sealed by a land surveyor or engineer as defined in this chapter.

(2) Upon receipt of a properly completed application, the department shall promptly issue a permit authorizing the removal or destruction of the monument; provided that:

(a) In extraordinary circumstances, to prevent hardship or delay, a verbal authorization may be granted, pending the processing and issuance of a written permit. A properly completed application shall be submitted by the applicant within fifteen days of the verbal authorization.

(b) Applications received by the department concerning local or geodetic control points will be referred to the appropriate agency for action. The applicant will be notified when such action is taken.

(3) One application may be submitted for multiple monuments to be removed or destroyed as part of a single project; however, there shall be separate attachments to the application form detailing the required information for each monument removed or destroyed.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-050, filed 2/25/94, effective 3/28/94; Order 131, § 332-120-050, filed 3/1/72, effective 4/7/72.]

WAC 332-120-060 Project completion—Perpetuation of the original position. (1) After completion of the activity that caused the removal or destruction of the monument, a land surveyor or engineer shall, unless specifically authorized otherwise:

(a) Reset a suitable monument at the original survey point or, if that is no longer feasible;

(b) Establish permanent witness monuments easily accessible from the original monument to perpetuate the position of the preexisting monument.

(2) Land boundary survey monumentation required by this chapter shall meet the requirements of the RCW 58.09.-120 and 58.09.130.

(3) After completion of the remonumentation, the land surveyor or engineer shall complete the report form required by this chapter and forward it to the department.

(4) Additionally, after remonumenting any corner originally monumented by the GLO or BLM, a land corner record form shall also be filed with the county auditor as required by the Survey Recording Act.

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-060, filed 2/25/94, effective 3/28/94.]

WAC 332-120-070 Application/permit form. The following form shall be used when making application to remove or destroy a survey monument:

APPLICATION FOR PERMIT TO REMOVE OR DESTROY A SURVEY MONUMENT

PERMIT NO.

You are hereby authorized to remove or destroy the described survey monument(s):

AUTHORIZING SIGNATURE/DATE
(DNR or Other Authorizing Agency)

APPLICANT INFORMATION:

NAME: TELEPHONE NO: DATE:

COMPANY OR AGENCY NAME AND ADDRESS:

I estimate that this work will be finished by (date)_____.

_____I request a variance from the requirement to reference to the Washington Coordinate System. (Please provide your justification in the space below.)

The variance request is _____ approved; _____ not approved. (FOR DNR USE ONLY) Reason for not approving:

MULTIPLE MONUMENTS:

_____Check here if this form is being used for more than one monument. You must attach separate sheets showing the information required below for each monument affected. You must seal, sign and date each sheet.

INDEXING INFORMATION FOR AN INDIVIDUAL MONUMENT:

1) THE MONUMENT IS LOCATED IN: SEC_____TWP_____RGE_____1/4-1/4_____

2) ADDITIONAL IDENTIFIER: (e.g., BLM designation for the corner, street intersection, plat name, block, lot, etc.)

MONUMENT INFORMATION:

Describe: 3) the monument/accessories found marking the position, 4) the temporary references set to remonument the position (include coordinates when applicable), and 5) the permanent monument(s) to be placed on completion (if a permanent witness monument(s) is set include the references to the original position).

SEAL/SIGNATURE/DATE SIGNED

(Form prescribed 2/94 by the Public Land Survey Office, Dept. of Natural Resources, pursuant to RCW 58.24.040 (8).)

COMPLETION REPORT FOR MONUMENT REMOVAL OR DESTRUCTION

(TO BE COMPLETED AND SENT TO THE DNR AFTER THE WORK IS DONE.)

_____ I have perpetuated the position(s) as per the detail shown on the application form.

_____
SEAL/SIGNATURE/DATE SIGNED

OR

_____ I was unable to fulfill the plan as shown on the application form. Below is the detail of what I did do to perpetuate the original position(s). (If the application covered multiple monuments attach sheets providing the required information. Seal, sign and date each sheet.)

_____
SEAL/SIGNATURE/DATE SIGNED

[Statutory Authority: RCW 58.24.040(8). 94-06-034 (Order 617), § 332-120-070, filed 2/25/94, effective 3/28/94.]

Chapter 332-130 WAC

MINIMUM STANDARDS FOR LAND BOUNDARY SURVEYS AND GEODETIC CONTROL SURVEYS AND GUIDELINES FOR THE PREPARATION OF LAND DESCRIPTIONS

WAC

332-130-010	Authority.
332-130-020	Definitions.
332-130-025	Corner restoration—Recording form.
332-130-030	Land subdivision and corner restoration standards—Recording.
332-130-040	Land description guidelines.
332-130-050	Survey map requirements.
332-130-060	Geodetic control survey standards.
332-130-070	Survey standards.
332-130-080	Relative accuracy—Principles.
332-130-090	Field traverse standards for land boundary surveys.
332-130-100	Equipment and procedures.

WAC 332-130-010 Authority. The department of natural resources, in accordance with RCW 58.24.040, 58.09.050, and 58.17.160, prescribes the following regulations setting minimum standards for land boundary surveys and geodetic control surveys and providing guidelines for the preparation of land descriptions.

[Statutory Authority: RCW 58.09.050 and 58.24.040(1). 92-03-007 (Order 597), § 332-130-010, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-010, filed 5/11/89; Order 275, § 332-130-010, filed 5/2/77.]

WAC 332-130-020 Definitions. The following definitions shall apply to this chapter:

(1) **Geodetic control surveys:** Surveys for the specific purpose of establishing control points for extending the National Geodetic Survey horizontal and vertical control nets, establishing plane coordinate values on boundary monuments within the requirements of the Washington coordinate system, and determining the vertical elevations of boundary monuments.

(2) **GLO and BLM:** The General Land Office and its successor, the Bureau of Land Management.

(3) **Land boundary surveys:** All surveys, whether made by individuals, entities or public bodies of whatever nature, for the specific purpose of establishing, reestablishing, laying out, subdividing, defining, locating and/or monumenting the boundary of any easement, right of way, lot, tract, or parcel of real property or which reestablishes or restores General Land Office or Bureau of Land Management survey corners.

(4) **Land corner record:** The record of corner information form as prescribed by the department of natural resources in WAC 332-130-025.

(5) **Land description:** A description of real property or of rights associated with real property.

(6) **Land surveyor:** Any person authorized to practice the profession of land surveying under the provisions of chapter 18.43 RCW.

(7) **NAD83 (1991):** North American Datum of 1983, adjusted in 1991.

(8) **Parcel:** A part or portion of real property including but not limited to GLO segregations, easements, rights of way, aliquot parts of sections or tracts.

(9) **Survey Recording Act:** The law as established and designated in chapter 58.09 RCW.

(10) **Washington coordinate system:** The system of plane coordinates as established and designated by chapter 58.20 RCW.

[Statutory Authority: RCW 58.09.050 and 58.24.040(1). 92-03-007 (Order 597), § 332-130-020, filed 1/3/92, effective 2/3/92. Statutory Authority: RCW 58.24.040(1). 91-19-013 (Order 581), § 332-130-020, filed 9/9/91, effective 10/10/91; 89-11-028 (Order 561), § 332-130-020, filed 5/11/89; Order 275, § 332-130-020, filed 5/2/77.]

WAC 332-130-025 Corner restoration—Recording form. The record of corner information required to be filed with the county auditor by the Survey Recording Act shall be filed on a form substantially like the following:

LAND CORNER RECORD

GRANTOR/SURVEYOR/PUBLIC OFFICER: This corner record correctly represents work performed by me or under my direction in conformance with the Survey Recording Act.

COMPANY OR AGENCY:

ADDRESS:

GRANTEE: PUBLIC SEAL/SIGNATURE/DATE

LEGAL: TWP: RGE: CORNER CODE:

ADDITIONAL IDENTIFIER: (BLM designation, street or plat names, block, lot, etc.)

COUNTY:

WASHINGTON PLANE COORDINATES: N: E:

ORDER: ZONE: DATUM (Date of adjustment):

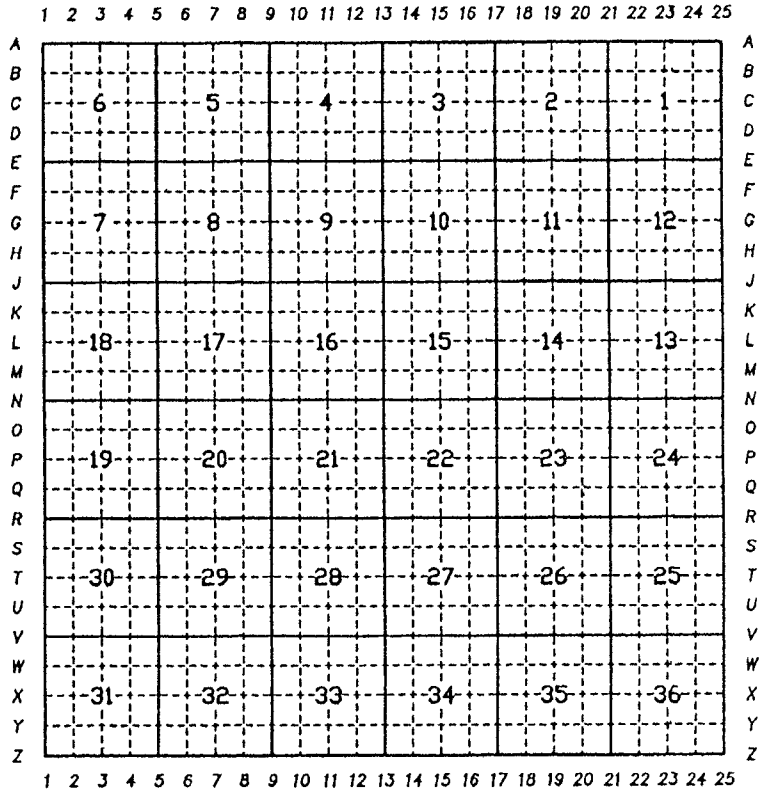
CORNER INFORMATION: Discuss the history, evidence found, and perpetuation of the corner. Diagram the references; provide the date of work; and, if applicable, a reference to a map of record and/or the field book/page no. Use the back, if needed.

This form is in compliance with the intent of RCW 65.04.045 and prescribed by the Public Land Survey Office, Department of Natural Resources - 1/97.

MARK THE CORNER LOCATION BELOW AND FILL IN THE CORNER CODE BLANK ON THE OTHER SIDE:
For corners at the intersection of two lines, the corner code is the alphanumeric coordinate that corresponds to the appropriate intersection of lines.

For corners that are only on one line, the corner code is the line designation and the related line segment; i.e., a corner on line 5 between "B" and "C" is designated BC-5.

For corners that are between lines, the corner code is both line segments; i.e., a corner in the SE1/4 of the SE1/4 of section 18 is designated MN 4-5.



RCW 58.09.060 (2) requires the following information on this form: an accurate description and location, in reference to the corner position, of all monuments and accessories (a) found at the corner and (b) placed or replaced at the corner; (c) basis of bearings used to describe or locate such monuments or accessories; and (d) corollary information that may be helpful to relocate or identify the corner position.

SPACE FOR ADDITIONAL COMMENT:

[Statutory Authority: RCW 58.24.040(1) and 58.09.050. 97-02-071, § 332-130-025, filed 12/31/96, effective 1/31/97; 92-03-007 (Order 597), § 332-130-025, filed 1/3/92, effective 2/3/92.]

WAC 332-130-030 Land subdivision and corner restoration standards—Recording. The following requirements apply when a land boundary survey is performed. If, in the professional judgment of the surveyor, the procedures of subsections (1) and (2) of this section are not necessary to perform the survey, departures from these requirements shall be explained and/or shown on the survey map produced.

(1) The reestablishment of lost GLO or BLM corners and the subdividing of sections shall be done according to applicable GLO or BLM plats and field notes and in compliance with the rules as set forth in the appropriate GLO or BLM *Manual of Surveying Instructions,* manual supplements and circulars. Federal or state court decisions that influence the interpretation of the rules should be considered. Methods used for such corner reestablishment or section subdivision shall be described on the survey map produced.

(2) All maps, plats, or plans showing a land boundary survey shall show all the corners found, established, reestablished and calculated, including corresponding directions and distances, which were used to survey and which will be necessary to resurvey the parcel shown. Additionally, all such maps, plats, or plans shall show sufficient section subdivision data, or other such controlling parcel data, necessary to support the position of any section subdivisional corner or controlling parcel corner used to reference the parcel surveyed.

Where a portion or all of this information is already shown on a record filed or recorded in the county recording office of the county in which the parcel is located, reference may be made to that record in lieu of providing the required data.

(3) Documentation shall be provided for all GLO or BLM corner(s) or point(s) used to control the location of the parcel surveyed. This requirement shall be met by providing on the document produced:

(a) The information required by both the Survey Recording Act and the history and evidence found sections of the Land Corner Record Form; or

(b) The recording data of a document(s) that provides the required information and is filed or recorded in the county recording office of the county in which the parcel is located.

(4) Every corner originally monumented by the GLO or BLM that is physically reestablished shall be monumented in accordance with the Survey Recording Act. If the reestablished corner is not filed or recorded as part of a record of survey, plat or short plat, at least three references shall be established and filed or recorded on a Land Corner Record Form. If the reestablished corner is filed or recorded as part of a record of survey, plat or short plat, then ties to at least two other monuments shown on the record document may serve in lieu of the required references. A valid set of coordinates on the Washington coordinate system may serve as one of the references. However, to best ensure an accurate relocation, references in close proximity to the corner are recommended. Monuments placed shall be magnetically locatable and include a cap stamped with the appropriate corner designation as defined in the current BLM *Manual of Surveying Instructions.*

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-030, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-030, filed 5/11/89; Order 275, § 332-130-030, filed 5/2/77.]

WAC 332-130-040 Land description guidelines. An instrument used for the conveyance of real property should contain a description of the property sufficiently definite to allow location by a land surveyor without recourse to oral testimony.

The following guidelines consist of elements which are recommended for use in the preparation of land descriptions. They are not intended to be all inclusive and may not be applicable in all situations:

(1) In a description of a lot, tract, parcel or portion thereof in a recorded plat, short plat, or record of survey:

(a) Lot and block number or designation and addition or subdivision name;

(b) Official recording data and identification of recording office;

(c) Location by section, township, and range with respect to the Willamette Meridian, (if applicable);

(d) Property location by county and state.

(2) In a description of an easement, lot, tract, or parcel described by metes and bounds:

(a) Parcel location by the subdivision(s) of the section; or portion of any other official subdivisional tract from a GLO or BLM public land survey; or portion of a recorded plat, short plat, or record of survey;

(b) Section, township, and range with respect to the Willamette Meridian;

(c) Property location by county and state;

(d) Direction and distance to GLO or BLM corners or properly determined section subdivision corners with description of the physical corners, if applicable;

(e) A description of the boundary giving:

(i) Place of beginning and/or initial point;

(ii) Basis of bearings or azimuths;

(iii) Bearings, angles or azimuths in degrees, minutes and seconds;

(iv) Distances in feet and decimals of feet or record units, where applicable;

(v) Curve data showing the controlling elements;

(vi) Identification of senior adjoiners giving recording office and filing reference;

(vii) Calls to existing controlling monuments, both artificial and natural;

(viii) Calls which indicate if a course is a section line, subdivisional line, a line of record or parallel therewith;

(ix) A bearing and distance for each boundary line of the described parcel with a closing course returning to the point of beginning, except where the boundary can be described by a record, physical or natural feature.

(3) In a description based on a public land survey subdivision:

(a) Special segregations such as donation land claims, homestead entry surveys, townsites, tracts, and Indian or military reservations;

(b) Government lot number(s);

(c) Aliquot part designation;

(d) Section, township, and range with respect to the Willamette Meridian;

(e) Property location by county and state.

(4) Other elements of consideration for any land description:

(a) Avoid ambiguities when exceptions to a parcel are stated;

(b) Indicate width of strip description and its relationship to described centerline or survey line;

(c) Delineate the dividing line when designating a fractional portion of a parcel;

(d) When designating one-half or other fractional portion of an aliquot part by government subdivision procedures, follow with "according to U.S. Government subdivision procedures."

[Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-040, filed 5/11/89; Order 275, § 332-130-040, filed 5/2/77.]

WAC 332-130-050 Survey map requirements. The following requirements apply to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county.

(1) All such documents filed or recorded shall conform to the following:

(a) They shall display a county recording official's information block which shall be located along the bottom or right edge of the document unless there is a local requirement specifying this information in a different format. The county recording official's information block shall contain:

(i) The title block, which shall be on all sheets of maps, plats or plans, and shall identify the business name of the firm

and/or land surveyor that performed the survey. For documents not requiring a surveyor's certificate and seal, the title block shall show the name and business address of the preparer and the date prepared. Every sheet of multiple sheets shall have a sheet identification number, such as "sheet 1 of 5";

(ii) The auditor's certificate, where applicable, which shall be on the first sheet of multiple sheets; however, the county recording official shall enter the appropriate volume and page and/or the auditor's file number on each sheet of multiple sheets;

(iii) The surveyor's certificate, where applicable, which shall be on the first sheet of multiple sheets and shall show the name, license number, original signature and seal of the land surveyor who had responsible charge of the survey portrayed, and the date the land surveyor approved the map or plat. Every sheet of multiple sheets shall have the seal and signature of the land surveyor and the date signed;

(iv) The following indexing information on the first sheet of multiple sheets:

(A) The section-township-range and quarter-quarter(s) of the section in which the surveyed parcel lies, except that if the parcel lies in a portion of the section officially identified by terminology other than aliquot parts, such as government lot, donation land claim, homestead entry survey, townsite, tract, and Indian or military reservation, then also identify that official subdivisional tract and call out the corresponding approximate quarter-quarter(s) based on projections of the aliquot parts. Where the section is incapable of being described by projected aliquot parts, such as the Port Angeles townsite, or elongated sections with excess tiers of government lots, then it is acceptable to provide only the official GLO designation. A graphic representation of the section divided into quarter-quarters may be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked;

(B) Additionally, if appropriate, the lot(s) and block(s) and the name and/or number of the filed or recorded subdivision plat or short plat with the related recording data;

(b) They shall contain:

(i) A north arrow;

(ii) The vertical datum when topography or elevations are shown;

(iii) The basis for bearings, angle relationships or azimuths shown. The description of the directional reference system, along with the method and location of obtaining it, shall be clearly given (such as "North by Polaris observation at the SE corner of section 6"; "Grid north from azimuth mark at station Kellogg"; "North by compass using twenty-one degrees variation"; "None"; or "Assumed bearing based on …"). If the basis of direction differs from record title, that difference should be noted;

(iv) Bearings, angles, or azimuths in degrees, minutes and seconds;

(v) Distances in feet and decimals of feet;

(vi) Curve data showing the controlling elements.

(c) They shall show the scale for all portions of the map, plat, or plan provided that detail not drawn to scale shall be so identified. A graphic scale for the main body of the drawing, shown in feet, shall be included. The scale of the main body of the drawing and any enlargement detail shall be large enough to clearly portray all of the drafting detail, both on the original and reproductions;

(d) The document filed or recorded and all copies required to be submitted with the filed or recorded document shall, for legibility purposes:

(i) Have a uniform contrast suitable for scanning or microfilming.

(ii) Be without any form of cross-hatching, shading, or any other highlighting technique that to any degree diminishes the legibility of the drafting detail or text;

(iii) Contain dimensioning and lettering no smaller than 0.08 inches, vertically, and line widths not less than 0.008 inches (equivalent to pen tip 000). This provision does not apply to vicinity maps, land surveyors' seals and certificates.

(e) They shall not have any adhesive material affixed to the surface;

(f) For the intelligent interpretation of the various items shown, including the location of points, lines and areas, they shall:

(i) Reference record survey documents that identify different corner positions;

(ii) Show deed calls that are at variance with the measured distances and directions of the surveyed parcel;

(iii) Identify all corners used to control the survey whether they were calculated from a previous survey of record or found, established, or reestablished;

(iv) Give the physical description of any monuments shown, found, established or reestablished, including type, size, and date visited;

(v) Show the record land description of the parcel or boundary surveyed or a reference to an instrument of record;

(vi) Identify any ambiguities, hiatuses, and/or overlapping boundaries;

(vii) Give the location and identification of any visible physical appurtenances such as fences or structures which may indicate encroachment, lines of possession, or conflict of title.

(2) All signatures and writing shall be made with permanent black ink.

(3) The following criteria shall be adhered to when altering, amending, changing, or correcting survey information on previously filed or recorded maps, plats, or plans:

(a) Such documents filed or recorded shall comply with the applicable local requirements and/or the recording statute under which the original map, plat, or plan was filed or recorded;

(b) Alterations, amendments, changes, or corrections to a previously filed or recorded map, plat, or plan shall only be made by filing or recording a new document;

(c) All such documents filed or recorded shall contain the following information:

(i) A title or heading identifying the document as an alteration, amendment, change, or correction to a previously filed or recorded map, plat, or plan along with, when applicable, a cross-reference to the volume and page and auditor's file number of the altered document;

(ii) Indexing data as required by subsection (1)(a)(iv) of this section;

(iii) A prominent note itemizing the change(s) to the original document. Each item shall explicitly state what the change is and where the change is located on the original;

(d) The county recording official shall file, index, and cross-reference all such documents received in a manner sufficient to provide adequate notice of the existence of the new document to anyone researching the county records for survey information;

(e) The county recording official shall send to the department of natural resources, as per RCW 58.09.050(3), a legible copy of any document filed or recorded which alters, amends, changes, or corrects survey information on any document that has been previously filed or recorded pursuant to the Survey Recording Act.

(4) Survey maps, plats and plans filed with the county shall be an original that is legibly drawn in black ink on mylar and is suitable for producing legible prints through scanning, microfilming or other standard copying procedures. The following are allowable formats for the original that may be used in lieu of the format stipulated above:

(a) photo mylar with original signatures,

(b) any standard material as long as the format is compatible with the auditor's recording process and records storage system. Provided, that records of survey filed pursuant to chapter 58.09 RCW are subject to the restrictions stipulated in RCW 58.09.110(5),

(c) an electronic version of the original if the county has the capability to accept a digital signature issued by a licensed certification authority under chapter 19.34 RCW or a certification authority under the rules adopted by the Washington state board of registration for professional engineers and land surveyors, and can import electronic files into an imaging system. The electronic version shall be a standard raster file format acceptable to the county.

(5) The following checklist is the only checklist that may be used to determine the recordability of records of survey filed pursuant to chapter 58.09 RCW. There are other requirements to meet legal standards. This checklist also applies to maps filed pursuant to the other survey map recording statutes, but for these maps there may be additional sources for determining recordability.

CHECKLIST FOR SURVEY MAPS BEING RECORDED
(Adopted in WAC 332-130)

The following checklist applies to land boundary survey maps and plans, records of surveys, plats, short plats, boundary line adjustments, and binding site plans required by law to be filed or recorded with the county. There are other requirements to meet legal standards. Records of survey filed pursuant to chapter 58.09 RCW, that comply with this checklist, shall be recorded; no other checklist is authorized for determining their recordability.

ACCEPTABLE MEDIA:

- For counties required to permanently store the document filed, the only acceptable media are:
  [ ] black ink on mylar or photo mylar
- For counties exempted from permanently storing the document filed, acceptable media are:
  [ ] any standards material compatible with county processes; or, an electronic version of the original.
- [ ] All signatures must be original and, on hardcopy, made with permanent black ink.
- [ ] The media submitted for filing must not have any material on it that is affixed by adhesive.

LEGIBILITY:

- [ ] The documents submitted, including paper copies, must have a uniform contrast throughout the document.
- [ ] No information, on either the original or the copies, should be obscured or illegible due to cross-hatching, shading, or as a result of poor drafting technique such as lines drawn through text or improper pen size selection (letters or number filled in such that 3's, 6's or 8's are indistinguishable).
- [ ] Signatures and seals must be legible on the prints or the party placing the seal must be otherwise identified.
- [ ] Text must be 0.08 inches or larger; line widths shall not be less than 0.008 inches (vicinity maps, land surveyor's seals and certificates are excluded).

INDEXING:

- [ ] The recording officer's information block must be on the bottom or right edge of the map.
  [ ] A title block (shows the name of the preparer and is on each sheet of multiple sheets).
  [ ] An auditor's certificate (on the first sheet of multiple sheets, although Vol./Pg. and/or AF# must be entered by the recording officer on each sheet).
  [ ] A surveyor's certificate (on the first sheet of multiple sheets; seal and signature on multiple sheets).
- The map filed must provide the following indexing data:
  [ ] S-T-R and the quarter-quarter(s) or approximate quarter-quarter(s) of the section in which the surveyed parcel lies,
  [ ] Optional: a graphic representation of the section divided into quarter-quarters may be used with the quarter-quarter(s) in which the surveyed parcel lies clearly marked;

MISCELLANEOUS

- If the function of the document submitted is to change a previously filed record, it must also have:
  [ ] a title identifying it as a correction, amendment, alteration or change to a previously filed record,
  [ ] a note itemizing the changes.
- For records of survey:
  [ ] The sheet size must be 18" x 24"
  [ ] The margins must be 2" on the left and 1/2" for the others, when viewed in landscape orientation.
  [ ] In addition to the map being filed there must be two prints included in the submittal; except that, in counties using imaging systems fewer prints, as determined by the Auditor, may be allowed.

[Statutory Authority: RCW 58.24.040(1) and 58.09.110. 00-17-063 (Order 704), § 332-130-050, filed 8/9/00, effective 9/9/00. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-050, filed 5/11/89; Order 275, § 332-130-050, filed 5/2/77.]

WAC 332-130-060 Geodetic control survey standards. The following standards shall apply to geodetic control surveys:

(1) The datum for the horizontal control network in Washington shall be NAD83 (1991) as officially adjusted and published by the National Geodetic Survey of the United States Department of Commerce or as established in accordance with chapter 58.20 RCW. The datum adjustment shall be identified on all documents prepared; i.e., NAD83 (1991).

(2) Horizontal and vertical control work must meet or exceed those accuracy and specification standards as published by the Federal Geodetic Control Committee, Septem-

ber 1984, in the bulletin titled, "Standards and Specifications for Geodetic Control Networks" or any subsequently published bulletins modifying such class standards. The class of control surveys shall be shown on documents prepared.

[Statutory Authority: RCW 58.24.040(1). 91-19-013 (Order 581), § 332-130-060, filed 9/9/91, effective 10/10/91; 89-11-028 (Order 561), § 332-130-060, filed 5/11/89; Order 275, § 332-130-060, filed 5/2/77.]

WAC 332-130-070 Survey standards. The accuracy or precision of field work may be determined and reported by either relative accuracy procedures or field traverse standards, provided that the final result shall meet or exceed the standards contained in WAC 332-130-090.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-070, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-070, filed 5/11/89; Order 275, § 332-130-070, filed 5/2/77.]

WAC 332-130-080 Relative accuracy—Principles. The following principles of relative accuracy are provided to guide those who may be analyzing their work by these procedures.

(1) Relative accuracy means the theoretical uncertainty in the location of any point or corner relative to other points or corners set, found, reestablished, or established. A standard of relative accuracy can be achieved by using appropriate equipment and implementing field and office procedures that will result in a ninety-five percent probability of achieving the accuracy required.

(2) Relative accuracy is not related to uncertainties due to differences between measured values and record values or uncertainties in the geodetic position.

(3) In the application of a relative accuracy standard, the surveyor must consider the established land use patterns, land values of and in the vicinity of the surveyed parcel, and the client's intended use of the property. Higher levels of precision are expected to be used in situations necessitating higher accuracy.

(4) Each land boundary survey should contain a statement identifying the method of mathematical analysis used in achieving a stated relative accuracy.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-080, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-080, filed 5/11/89; Order 275, § 332-130-080, filed 5/2/77.]

WAC 332-130-090 Field traverse standards for land boundary surveys. The following standards shall apply to field traverses used in land boundary surveys. Such standards should be considered minimum standards only. Higher levels of precision are expected to be utilized in areas with higher property values or in other situations necessitating higher accuracy.

(1) Linear closures after azimuth adjustment.

(a) City - central and local business and industrial areas 1:10,000

(b) City - residential and subdivision lots 1:5,000

(c) Section subdivision, new subdivision boundaries for residential lots and interior monument control 1:5,000

(d) Suburban - residential and subdivision lots 1:5,000

(e) Rural - forest land and cultivated areas 1:5,000

(f) Lambert grid traverses 1:10,000

(2) Angular closure.

(a) Where 1:10,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of $10 \sqrt{n}$, where "n" equals the number of angles in the closed traverse.

(b) Where 1:5,000 minimum linear closure is required, the maximum angular error in seconds shall be determined by the formula of $30 \sqrt{n}$ where "n" equals the number of angles in the closed traverse.

[Statutory Authority: RCW 58.24.040(1). 90-06-028 (Order 568), § 332-130-090, filed 3/1/90, effective 4/1/90; 89-11-028 (Order 561), § 332-130-090, filed 5/11/89.]

WAC 332-130-100 Equipment and procedures. (1) All land boundary surveys filed or recorded shall contain a statement identifying the type of equipment used, such as 10-second theodolite and calibrated chain, or 10-second theodolite and electronic distance measuring unit, and procedures used, such as field traverse, photogrammetric survey, global positioning system survey or a combination thereof to accomplish the survey shown;

(2) All measuring instruments and equipment shall be maintained in adjustment according to manufacturer's specifications.

[Statutory Authority: RCW 58.24.020. 04-11-019 (Order 711), § 332-130-100, filed 5/10/04, effective 6/10/04. Statutory Authority: RCW 58.24.040(1). 89-11-028 (Order 561), § 332-130-100, filed 5/11/89.]

Chapter 332-140 WAC

FOREST PRODUCTS INDUSTRY RECOVERY ACT OF 1982

WAC

332-140-010	Introduction and general definitions.
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332-140-230	Payment and adjustments.
332-140-240	Effect of expiration of RCW 79.01.126.
332-140-300	Initial deposit rate.
332-140-400	Eligible enterprise petition requirements to purchase set aside timber.

WAC 332-140-010 Introduction and general definitions. (1) The regulations in this chapter are promulgated by the commissioner of public lands of the state of Washington to implement the Forest Products Industry Recovery Act of 1982. Unless provided otherwise herein or unless the context clearly requires otherwise, the following definitions apply to this chapter and to the act:

(a) "The act" means the Forest Products Industry Recovery Act of 1982, which is sections 3 through 9, chapter 222, Laws of 1982.

(b) "ARRF" means the access road revolving fund referred to in the contract and in RCW 79.38.050.

(c) "Assignment" means the assignment of rights or delegation of duties by a purchaser of a sale or contract to another.

(d) A purchaser "commences operations" on a sale by engaging in removals on that sale or by commencing road construction, falling, bucking, or other contract requirements.

(e) A timber sale contract or timber sale which was "purchased," "entered into," or "purchased at auction" in reference to certain dates specified in sections 4, 5 and 6 of the act refers to the date on which the public auction was held at which such contract or sale was offered.

(f) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired and on which there are forest products yet to be removed. Under section 6 of the act, a purchaser may default a sale by giving notification which specifies that the purchaser is waiving all its rights to the sale. Upon receipt of the notification by the department, the purchaser's operating authority on the sale expires.

(g) "Department" means the department of natural resources of the state of Washington.

(h) "Existing," in reference to a sale, means a sale on which the operating authority has not expired and on which there are forest products yet to be removed.

(i) "Expiration date," in reference to a sale, means the date on which the operating authority expires on that sale under the terms of the contract.

(j) To "identify" a sale means to state the name of the sale and its application number.

(k) "Merchantable" forest products means those forest products included in a sale which are "merchantable" as that term is used in the contract and does not include "cull" or "utility" forest products as those terms are defined in the contract.

(l) "MBF" means thousand board feet Scribner Scale of forest products.

(m) "MMBF" means million board feet Scribner Scale of forest products.

(n) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is to remove the forest products which are the subject of the sale.

(o) A "partial cut" sale is one other than a clearcut and on which only part of existing forest products are designated to be removed.

(p) "Performance security" means the surety bond, cash bond, savings account assignment, irrevocable bank letter of credit, or other form of security which insures the faithful performance by the purchaser of the terms of the contract.

(q) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns at least a majority of shares of another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser under the provisions of the act.

(r) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which were sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. The terms "sale" or "contract" shall be used in these regulations. All of the foregoing terms are considered to be synonymous as referred to in the act and these regulations.

(s) "Person" as used in section 5(2) of the act means the business entity which paid extension fees prior to the effective date of the act.

(t) "Window sale" means a sale which is referred to in subsection (2) below.

(2) **Window sales.**

(a) As referred to in these regulations and in sections 4, 5 and 6 of the act, sales or contracts "entered into," "purchased," or "purchased at auction" between January 1, 1978, and July 1, 1980, means those sales for which the auction was held after January 1, 1978, and before July 1, 1980.

(b) "Lincoln day blowdown" sales are those sales identified by the department which were prepared and sold as a result of damage to the timber caused primarily by the Lincoln day windstorm which occurred on or about February 13, 1979. Such term does not include sales sold because of other reasons or sales sold because timber which was damaged by the Lincoln day storm was further substantially damaged by later storms or other causes. The following sales are the only Lincoln day blowdown sales which were auctioned from July 1, 1980, through December 31, 1980, on which there are forest products remaining to be removed:

(i) Lower Wasankari, Application No. 40694
(ii) Piedmont Blowdown, Application No. 42799
(iii) Miller Road Blowdown, Application No. 42817
(iv) 4 Corners Blowdown, Application No. 43196
(v) Key Boundary, Application No. 42078
(vi) Peaks Pickens, Application No. 42933
(vii) Three Sisters Blowdown, Application No. 42493
(viii) Little Boy Blew, Application No. 42163
(ix) Miller Pickup Blowdown, Application No. 43474
(x) Shay, Application No. 42133

(3) **Full reservation of rights.** These regulations are being adopted because of the presumption that enacted laws are valid. However, all existing, past and future purchasers should be aware that claims have been made that the act is invalid and that there is a possibility that the act or portions thereof may be challenged in court, even by the department or other governmental agency or entity.

Any purchaser who requests relief under the act does so at its own risk as to the validity of the act and the possibility of judicial orders or decrees affecting it. The department makes no warranty of the validity of the act and reserves the right to immediately terminate, rescind, or otherwise refuse to grant relief under the act if all or a portion of the act is declared invalid, whether such court order or decision is obtained by others or itself. The department further reserves the right to secure all rights, monies, charges, damages or

claims that it would otherwise have been entitled to if the act or portions thereof are declared invalid, and to take such action as may be necessary to secure the same.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-010, filed 7/1/82.]

WAC 332-140-020 Extension procedure. Requests for extensions under the act shall be in writing. Extensions will be granted only by a written extension document. Extensions granted under the act shall only be on a quarterly (3 month) basis and shall be for 3, 6, 9 or 12 months, except as provided in WAC 332-140-050 (2)(c). An extension will not be granted for less time than is reasonably required, as determined by the department, to remove all of the forest products remaining on the sale being extended.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-020, filed 7/1/82.]

WAC 332-140-030 New plan of operations required. A new plan of operations must be filed and approved for all window sales on which the purchaser commences operations prior to July 15, 1982, before the purchaser commences operations.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-030, filed 7/1/82.]

WAC 332-140-040 Extension time credits. This section implements section 4 of the act.

(1) **Introduction.** "Extension time credit" means the number of calendar days a purchaser receives by engaging in or agreeing to engage in the removal of forest products on a sale which qualifies under subsection (2) below. Extension time credit can be received only for removals engaged in after April 3, 1982. This credit can only be used to extend window sales which exist at the time of the application for an extension of such sale. There are two ways to receive extension time credit. First, a purchaser can "earn" the credit. The extension time credit is "earned" only after the purchaser has satisfactorily engaged in the removals. Second, a purchaser can receive "conditional" credit by agreeing to engage in removals in the future.

(2) **Sales upon which purchaser may earn credit.** The following sales are sales on which the purchaser may earn extension time credit:

(a) All sales auctioned prior to April 3, 1982, but only if and to the extent that the purchaser agrees to and engages in removals and receives a logging release on that sale prior to December 31, 1983.

(b) Sales auctioned on or after April 3, 1982, which, in the prospectus and contract, are identified by the department as sales on which extension time credit may be earned, but only if and to the extent that the purchaser agrees to and engages in removals on that sale prior to the sale's expiration date or December 31, 1983, whichever is sooner. Up to 60% of the number of sales auctioned in 1982 and 1983 may be so designated by the department.

(3) **Amount of extension time credit.** One calendar day of extension time credit is earned for each acre of forest products which the purchaser satisfactorily removes and for which a logging or operating release has been issued, except that on partial cut sales or units on which less than 10 MBF/acre is satisfactorily removed, the following schedule shall be used to compute the number of days of extension time credit which may be earned:

Department's presale cruise volume of forest products (average board feet per acre)	Acres of forest products to be removed to earn one day of Extension Time Credit
9,000 to 9,999	1.1
8,000 to 8,999	1.2
7,000 to 7,999	1.4
6,000 to 6,999	1.7
5,000 to 5,999	2.0
4,000 to 4,999	2.5
3,000 to 3,999	3.3
2,000 to 2,999	5.0
Less than 2,000	10.0

Extension time credit will be computed on the foregoing basis, whether the removal of the forest products actually takes a longer or shorter time. The volume of forest products and acreage of a sale shall be the volume and acreage stated in the contract. Extension time credit is earned for time spent on yarding, loading and hauling activities only and not for road construction, falling and bucking, or for other contract requirements.

(4) **Request to earn extension time credit.** To earn extension time credit on a sale qualifying under subsection (2) above, a purchaser must submit a written request to the department. Extension time credit will be granted only for forest products removed on or after the day the request is received by the department. This request must identify the sale(s) on which the purchaser wishes to operate to earn extension time credit. The department shall determine the amount of extension time credit available to be earned on a sale in accordance with subsection (3) above. The department and the purchaser shall enter into a written agreement on a form provided by the department which sets forth the limitations of subsection (2) above as well as the amount of extension time credit which can be earned by engaging in such removals. The department shall establish an extension time credit account for the purchaser. After extension time credit is earned on a sale, the department will credit the purchaser's extension time credit account with the proper number of days of extension time credit. The account shall be debited from time to time as extension time credit is used under subsection (9) below. The purchaser which earns the extension time credit may not assign that credit to another purchaser.

(5) **Request to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982.** If a purchaser wishes to receive extension time credit for engaging in removals from April 3, 1982, through May 14, 1982, it must submit a written request to the department on or before May 14, 1982. This request must identify the sale on which the purchaser wishes to receive the credit. The department shall determine the proper number of days of extension time credit in accordance with subsection (3) above and shall credit the purchaser's extension time credit account accordingly. If a purchaser fails to meet the foregoing deadline, it shall not receive credit for engaging in removals from April

3, 1982, up through the time it submits a request on that sale under subsection (4) above.

(6) **Conditional extension time credit.** If a purchaser needs to extend a window sale and does not have a sufficient amount of extension time credit in its extension time credit account to do so, the purchaser may submit a written request to the department to receive conditional extension time credit. The request must identify the window sale to be extended and the sale on which the purchaser will agree to engage in removals to receive the conditional credit.

The department and the purchaser shall enter into an agreement, on a form provided by the department, which identifies the sale being extended, the sale on which the purchaser agrees to engage in removals, the amount of extension time credit being conditionally granted, and the date by which the purchaser must complete the removals agreed upon. Failure of the purchaser to complete the removals by the foregoing date subjects the purchaser to subsection (8) below. A purchaser which receives conditional extension time credit may not assign that credit to another purchaser.

(7) **Performance security required for agreements involving conditional credit.** An agreement extending a sale using conditionally granted extension time credit shall be secured by the initial deposit and the performance security on the sale being extended and by the initial deposit of the sale on which the purchaser agrees to engage in removals. An adequate amount of the deposits and such security, as determined by the department, must be maintained until the purchaser completes the removals as agreed to, or can substitute the conditionally granted credit with credit actually earned after the date of the agreement referred to above.

(8) **Purchaser's failure to engage in removals.** If the purchaser fails to meet the completion date for removals as stated in the agreement referred to in subsection (6) above, all of the conditional extension time credit granted on that sale will be disallowed, and the sale(s) which was extended using the conditional extension time credit shall not receive such credit. The purchaser shall receive no extension time credit for the removals engaged in. The department shall notify the purchaser in writing of a failure to meet the completion date. Within 30 days of the date of mailing or personal service of this notice, the purchaser must pay for any extension granted, to the extent that it was granted using conditional credits, as that extension fee would have been computed under the contract as limited only by section 9 of the act. In addition, the purchaser shall pay an additional interest charge on the value of that portion of the extension granted using conditional credit at 12 percent per annum from the date the extension was granted through the date of actual payment by the purchaser. If the purchaser fails to make this payment within 30 days following the above notice, the purchaser's operating authority on the sale shall terminate, and the department may recover damages against the purchaser and its surety as allowed by law.

(9) **Use of extension time credit to extend a window sale.**

(a) Credit earned and credited to the purchaser's extension time credit account may be used by the department to extend a window sale upon written application by the purchaser. Extensions under section 4 of the act will be granted only by written extension agreement. The purchaser must deliver to the department a properly executed extension agreement on or before the expiration date of the sale which the purchaser wishes to extend under section 4 of the act. Failure to meet the above deadline will disqualify the sale for an extension under section 4 of the act.

(b) The purchaser may use the extension time credit earned or conditionally granted to extend as many window sales as it selects. Sales may be extended for 3, 6, 9 or 12 months only, but the purchaser may apply as much credit as it has earned toward the extension. Extension time credit earned may be applied together with cash or road credit in any combination toward the extension fee. Conditionally granted extension time credit may also be used, but only if needed.

(c) Days of extension time credit earned shall be applied to a sale without regard to whether the extension is during the operating season, closed or winter season, or shutdowns, except that contract termination date adjustments under contract clause 14-4 may still be made.

(d) The department will grant no extension under section 4 of the act after December 31, 1983, except that the department may exercise its rights under subsection (8) above after December 31, 1983. The term of extensions granted under section 4 of the act shall not extend beyond December 31, 1984.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-040, filed 7/1/82.]

WAC 332-140-050 Paid extension credit. This section implements section 5 of the act.

(1) **Section 5(1).**

(a) **Qualifying sales.** Only window sales which exists as of the date of the application under this subsection qualify for a paid extension credit under section 5(1) of the act.

(b) **Written application.** To qualify for the paid extension credit, an extension agreement, properly executed by the purchaser and surety (if applicable), must be received by the department at least one working day prior to the then current expiration date of the sale on which the purchaser seeks a paid extension credit. No credits will be granted under section 5(1) of the act if the purchaser does not meet the foregoing deadline.

(c) **Amount of paid extension credit.** The amount of the paid extension credit on a sale shall be equal to the total amount of the extension fees paid by the purchaser on that sale after April 3, 1982 by cash or road credits.

(d) **Same sale.** The paid extension credit shall be applied, dollar for dollar, to payments for forest products only on the same sale as the extension fee is paid by the purchaser. The paid extension credit may not be used to pay ARRF charges.

(e) **Length of extensions.** The extensions granted on a sale under section 5(1) of the act shall only be 3, 6, 9 or 12 months in length. The department's authority to grant extensions under section 5(1) of the act expires on December 31, 1984.

(2) **Section 5(2).**

(a) **Qualifying sales.** Section 5(2) of the act applies only to extensions which were requested, paid for, and for which the extension agreements were executed on or before April 2, 1982. Section 5(2) of the act applies to all sales existing as of

the date of the purchaser's application hereunder. Extensions of sales for which extensions were paid after April 2, 1982, do not qualify for an equivalent extension under section 5(2) of the act. A person may not receive a credit under section 5(2) of the act for minimum fee ($100) extensions granted before April 3, 1982, but only for extensions paid in cash by the purchaser.

(b) **Written application.** A person wishing to receive an extension on a sale under section 5(2) of the act must make a written application to the department which identifies the sale, the amount of extension time claimed under section 5(2) of the act, and the dates and periods of past extensions purchased on that sale.

(c) If a person satisfies the provisions of (2)(a) and (b) above, the department shall, without any charge, grant the person applying for an extension under section 5(2) of the act an extension equal in time to the total time of the extensions on that sale which were paid by the person extending the sale, up to a total of twelve months.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-050, filed 7/1/82.]

WAC 332-140-060 Defaults. This section is to implement section 6 of the act.

(1)(a) **Qualifying sales.** Section 6 of the act applies only to window sales which were in existence as of April 3, 1982, or for which a payment is made after April 3, 1982, under section 7 of the act to reinstate the sale.

(b) **Written notification.** The purchaser must provide the department with written notification on or before July 14, 1982, stating that the purchaser elects to terminate or default a sale under section 6 of the act. Such notification must state that the purchaser is giving up all of its rights under that contract as of the date of the notification. The notification must be accompanied by a sworn written statement by an authorized representative of the purchaser which identifies the names of all affiliates, subsidiaries, and parent companies of the purchaser which purchased a window sale. The department shall provide the form for this statement. The notification must also be accompanied by a $2,500 administrative fee. The notification will be considered received by the department only when the fee and sworn statement are received by the department.

(c) **Limitation on sales to be defaulted.** The following limitations apply to the sales which a purchaser may terminate or default under section 6 of the act.

(i) The purchaser may default on the sale(s) of its choice of which it was the purchaser as of April 3, 1982, if the sale qualifies under subsection (1)(a) above and if the cumulative volume remaining on those sales for which notification is given does not exceed 15 MMBF of forest products as of the date of the notification. The volume remaining on a sale shall be computed by the department by subtracting the volume of merchantable forest products removed from the department's presale cruise volume of merchantable forest products stated in the contract.

(ii) No sales which have been assigned after April 3, 1982, may be terminated or defaulted.

(iii) Only entire sales may be defaulted. A purchaser may not default on part of a sale under section 6 and choose to retain any right to remove forest products from any part of the same sale.

(iv) A sale may be terminated or defaulted even though the purchaser has operated on it and removed forest products from the sale, subject to the further limitations of subsection (1)(d) below.

(v) A sale on which all of the forest products have been removed may not be terminated or defaulted under section 6 of the act.

(d) **Limitations on defaults of sales on which operations have occurred.** A sale which otherwise qualifies for termination or default under section 6 of the act and this section may be defaulted subject to the following obligations and reservations:

(i) All forest products must be paid for which were removed from the sale and all due ARRF payments and other payments due must be paid, including all payments for forest products and ARRF deferred under a deferred payment agreement. The department reserves the full right to take appropriate action against the purchaser and its surety to recover all applicable damages for a failure of the purchaser to make the foregoing payments on or before the receipt of the notification of default.

(ii) All outstanding contract requirements (other than removal of forest products) which arose as a result of the purchaser's activities on the sale must be performed. These requirements include, but are not limited to, slash disposal preparation work, stream cleanout, falling nonmerchantable forest products, road maintenance, ditching, waterbarring and fire trail construction. If the purchaser fails to perform the foregoing outstanding requirements, the department shall determine the current cost of performing that work and charge the purchaser therefor. If the purchaser fails to promptly pay such charges, the department may take appropriate action to recover the same from the purchaser and its surety.

(iii) The purchaser and its surety are not released from any liability or duty to indemnify the department which arose as a result of the acts or omissions of the purchaser or its delegate relating to the sale being defaulted.

(2) **No refunds or credits.** Upon notification under subsection (1)(b) above, the department shall make no refunds nor give any credits of any cash payments made to the department in connection with the contract which is being defaulted. Such cash payments include, but are not limited to, the initial deposit, extension fees, cash advance payments, and cash performance bonds, whether the foregoing deposits or payments are used or unused. All such sums shall be retained by the department.

(3)(a) **Road credits.** Upon receipt of notification under subsection (1)(b) above, the department shall compute the road credit which is provided by section 6(3) of the act. The credit shall only be allowed for construction of roads that are listed under the ROAD DEVELOPMENT section of the timber sale prospectus, as shown on the timber sale map.

(b) **Amount of road credit.** The amount of the road credit shall be determined based upon the percentage of road work satisfactorily completed in each road construction phase. The phases of road construction are those separate phases expressly identified in the road appraisal work forms used by the department in the presale appraisal. The percent-

ages of satisfactory completion shall be applied to the road construction cost estimates as stated in the department's road construction presale appraisal.

(c) **Reduction of credit.** The total amount of the road credit as computed in subsection (3)(b) above shall be reduced by the difference between the current costs, as determined by the department, of correcting road work which was unsatisfactorily performed and the cost of completing such road work as computed in the department's original presale road construction appraisal.

(d) **Amortization.** The amount of the road credits shall be further reduced by the same percentage as the percentage of forest products removed on that sale. The percentage of forest products removed shall be computed by dividing the volume of merchantable forest products removed by the volume stated in the contract.

(4) **Application of road credit.**

(a) Road credit will be applied only upon written application of the purchaser and after the department has determined the amount of the road credit. Such credit may be applied to one-half of any required payment for stumpage, cash deposits for performance security, or extension fee on a sale. Road credits cannot be applied to the initial deposit on a sale nor to a payment made under section 7 of the act.

(b) Road credit will only be applied to sales of that purchaser which are situated on land of the same trust and beneficiary as the sale on which the road credit is given. If the sale on which the road credit is given is situated on land of more than one trust and beneficiary the total road credit for the sale shall be divided in proportion to the acreage of each trust and beneficiary and applied separately and only to sales situated on the same trust and beneficiary.

(5) A purchaser whose sale expires or expired without removing all of the forest products from the sale and which sale does not qualify to be terminated or defaulted by the purchaser under section 6(1) of the act remains fully liable to the department for whatever damages that may be recovered under law notwithstanding the provisions of the act. This includes a sale which had expired as of April 3, 1982, and which the purchaser does not reinstate under section 7 of the act on or before July 14, 1982.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-060, filed 7/1/82.]

WAC 332-140-070 Reinstatement of sales. This section implements section 7 of the act.

(1) **Qualifying sales.** Section 7 of the act applies to sales on which the operating authority had expired as of April 3, 1982 which otherwise would qualify for extension under sections 4 or 5 of the act or to be defaulted under section 6 of the act. The purpose of section 7 of the act is to allow the purchaser to make a payment to reinstate such a sale and thereby make that sale eligible for relief under sections 4, 5, 6 and 9 of the act. A reinstatement payment made under section 7 of the act is not considered an extension payment for purposes of section 5 of the act.

(2) **Application for reinstatement.** To reinstate a sale under section 7 of the act, the purchaser must make written application to the department for reinstatement on or before July 14, 1982.

(3) **Reinstatement payment.** To be effective, an application for reinstatement under section 7 of the act must be accompanied by a payment equal to the extension payment for that sale computed from the date the sale or a previous extension thereof expired through the date the application is received. The amount of this payment shall be computed as provided in the contract for extensions. The interest limitation of section 9 of the act does not apply to the extension computation under the provisions of section 7 of the act and this section. Road credits under section 6 of the act may not be used to make the reinstatement payments required by section 7 of the act.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-070, filed 7/1/82.]

WAC 332-140-090 Extension interest rate limitation. This section implements section 9 of the act.

(1) Section 9 of the act applies to extensions on sales which were auctioned on or before December 30, 1980, for which extensions are granted after April 3, 1982, but before December 31, 1984. In computing the fees for such extensions, the department shall use the interest rate stated in the contract or 13 percent, whichever is less, in computing the interest charge on the unpaid portion of the contract which forms part of the extension fee.

(2) Reinstatement payments made under section 7 of the act are not subject to the interest rate limitation of section 9 of the act.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-090, filed 7/1/82.]

WAC 332-140-100 Mt. St. Helens sales excluded. Sections 2 through 9 of the act do not apply to any sales sold before or after any eruption of Mt. St. Helens and which include or included timber damaged by any such eruption.

[Statutory Authority: 1982 c 222 § 8. 82-14-058 (Order 380), § 332-140-100, filed 7/1/82.]

WAC 332-140-200 Introduction and definitions. (1) Implementation of RCW 79.01.126. These regulations, WAC 332-140-200 through 332-140-240, are promulgated by the department of natural resources for the purpose of implementing RCW 79.01.126, which provides for the adjustment of contract bid prices on timber sales sold on a scale basis having a minimum appraisal value over twenty thousand dollars and which are auctioned on or after October 1, 1983 but before October 1, 1987. Stumpage rate adjustment shall apply only to major species of timber removed.

(2) Definitions. As used in these regulation and in RCW 79.01.126, where applicable:

(a) "Coast publication" means the market indexes published by the Western Woods Products Association in its publication known as the PNW Coast Lumber Price Index.

(b) "Inland publication" means the market indexes published by the Western Wood Products Association in its publication known as the Inland Lumber Price Index.

(c) "Contract bid price" for a given species of timber means the price for that species bid by the purchaser or set in the contract where bidding is not allowed on that species.

(d) "Department" means the department of natural resources.

(e) "Market index change amount" means the same in these regulations as it is defined in RCW 79.01.126(2).

(f) Timber "removed" means and includes only timber that is taken from the sale area.

(g) "Timber removed during a calendar quarter" shall be determined using the date the timber removed is scaled as provided for in the contract.

[Statutory Authority: RCW 79.01.126. 87-22-076 (Order 521), § 332-140-200, filed 11/4/87; 83-18-009 (Order 401), § 332-140-200, filed 8/26/83.]

WAC 332-140-210 Market indexes established. (1) Following the conclusion of each calendar quarter, the department shall establish the amount of each market index for that quarter for the species of timber listed below. These species are determined to be major species, for which reasonably available and reliable market price information is available. Each index amount shall be established by extracting from the appropriate Western Wood Products Association index the quarterly average prices per thousand board feet. The major species will be indexed to the following indexes:

(a) Douglas fir and larch. For Douglas fir situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Douglas fir" index of the Coast publication. For Douglas fir and larch situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "dry Douglas fir-larch" index of the Inland publication. Larch situated west of the cascade crest is not a major species and shall not be subject to adjustment of the contract bid price.

(b) Hemlock/true fir. For the hemlocks and true firs situated west of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "hem-fir" index of the Coast publication. For the hemlocks and true firs situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white fir (hem-fir)" index of the Inland publication.

(c) Ponderosa pine. For ponderosa pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "coast-inland north ponderosa pine" index of the Inland publication. Ponderosa pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(d) White pine. For white pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "Idaho white pine" index of the Inland publication. White pine situated west of the cascade crest is not a major species and is not subject to adjustment of the contract bid price.

(e) Engelmann spruce and lodgepole pine. For Englemann spruce and lodgepole pine situated east of the cascade crest, the market index shall be the appropriate quarterly price extracted from the "white woods" index of the Inland publication. Englemann spruce and lodgepole pine situated west of cascade crest are not major species and are not subject to adjustment of the contract bid prices.

(2) Other species not indexed. Species other than those listed above are not major species. There is no readily available and reliable market information for such species and they are not subject to adjustment of the contract bid price.

(3) Cull volume not indexed. Cull logs, including utility logs as defined in the contract, of all species are not major species. There is no readily available and reliable market information for such logs and they are not subject to adjustment of the contract bid price.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-210, filed 8/26/83.]

WAC 332-140-220 Price to be paid for timber removed. The rate to be paid by the purchaser for each species of timber subject to adjustment of the contract bid price shall be the contract bid price plus or minus the market index change amount, as appropriate, but not less than sixty-five percent of the contract bid price.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-220, filed 8/26/83.]

WAC 332-140-230 Payment and adjustments. The periodic payments made by the purchaser for timber removed during a given quarter shall be based upon the adjusted price for the previous quarter, except that for removals during a quarter in which the sale is sold, the price used shall be the contract bid price. Following the establishment of the market index for the quarter, the appropriate adjustments will be made to the payments for the timber removed during that quarter.

[Statutory Authority: RCW 79.01.126. 83-18-009 (Order 401), § 332-140-230, filed 8/26/83.]

WAC 332-140-240 Effect of expiration of RCW 79.01.126. Although RCW 79.01.126 will cease to be effective October 1, 1987, the regulations concerning stumpage rate adjustment will continue to apply to sales auctioned during the effective dates of RCW 79.01.126. The regulations will not apply to sales auctioned on or after October 1, 1987.

[Statutory Authority: RCW 79.01.126. 87-22-076 (Order 521), § 332-140-240, filed 11/4/87.]

WAC 332-140-300 Initial deposit rate. (1) The rate for the initial deposit specified in RCW 79.01.132 and 79.01.204 shall be ten percent of the actual purchase price for lump sum sales and ten percent of the projected purchase price for scale sales, except as follows:

(a) In the case of lump sum sales over five thousand dollars, the initial deposit shall not be less than five thousand dollars.

(b) When the purchaser is a defaulter, the initial deposit shall be twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(c) When a sale is assigned to a defaulter, the initial deposit shall be increased to twenty-five percent of the purchase price for lump sum sales and twenty-five percent of the projected purchase price for scale sales, subject to subsection (1)(a).

(2)(a) The purchaser shall certify to the department on the day of the sale in the form prescribed by the department whether the purchaser is a defaulter.

(b) When a sale is assigned, the assignee shall certify to the department in the form prescribed by the department

whether the assignee is a defaulter. If the assignee is a defaulter, the assignee shall deposit the additional amount before the assignment is approved by the department.

(3)(a) The increased initial deposit for a defaulter shall remain in effect throughout the term of the sale, except as provided in subsections (3)(b) and (c).

(b) The initial deposit for a defaulter may be reduced to ten percent only if the defaulter has resolved all sales which were offered for bid after January 1, 1982, and were defaulted after September 19, 1984.

(c) The initial deposit may be reduced to ten percent if the defaulter assigns the sale to an assignee who is not a defaulter, but only if the condition in (3)(b) is met by the original purchaser.

(d) If the initial deposit is reduced pursuant to subsection (3)(b) or (c), the excess deposit shall be credited to stumpage or installment payments under the timber sales contract on which the increased deposit was required.

(4) The following definitions apply to this section.

(a) "Assign" means to transfer the rights and duties of a purchaser of a sale to another pursuant to the provisions of the timber sale contract.

(b) "Default" means, in reference to a sale, that the purchaser's operating authority on such sale has expired without completion of performance or full payment of amounts due, or the department has terminated the sale prior to expiration of the operating period for a breach of contract.

(c) "Defaulter" means a purchaser who (i) defaults on a sale after September 19, 1984, which sale was offered for bid after January 1, 1982, and (ii) has not resolved the defaulted sale.

(d) "Department" means the department of natural resources of [the] state of Washington.

(e) The "operating authority" on a sale refers to the dates stated in the contract during which the purchaser is required to remove the forest products which are the subject of the sale.

(f) "Purchaser" means the purchaser of a sale and any affiliate, subsidiary or parent company thereof. "Affiliate" means a person, corporation or other business entity which is allied with or closely connected to another in a practical business sense, or is controlled or has the power to control the other or where both are controlled directly or indirectly by a third person, corporation or other business entity. "Affiliate" includes a joint venture. "Parent company" shall mean a corporation which owns a controlling interest in another corporation. The corporation whose shares are so owned is a "subsidiary" of the parent company.

Purchasers shall be required, upon request of the department, to produce satisfactory written documentation of the relationship between any two or more persons, corporations or other business entities which they or the department claim should be treated as one purchaser.

(g) "Resolved" in reference to a sale in default means full compliance with the terms of (i) an agreement by the department and the defaulter of all disputed matters arising from the sale or (ii) final disposition by a court including termination of judicial review.

(h) "Timber sale contract," "sale contract," "contract," "timber sale," "sale of timber," and "sale" all mean the sale of and the contract to remove and pay for forest products which have been or are being sold by the department at auction by voice or sealed bid and which had, at time of auction, a minimum appraised value of over twenty thousand dollars. All of the foregoing terms are considered to be synonymous as referred to in these regulations.

(5) The provisions of WAC 332-140-300 shall be deemed to be incorporated into the terms of all timber sales purchased after the effective date of these rules. A violation of these rules shall be deemed a breach of the provisions of the applicable timber sale.

[Statutory Authority: RCW 43.30.150 (2) and (6) and 43.30.070. 85-01-066 (Order 438), § 332-140-300, filed 12/18/84.]

WAC 332-140-400 Eligible enterprise petition requirements to purchase set aside timber. A business concern and its affiliates, as defined in 13 C.F.R. 121.3, in effect January 1, 1988, (enterprise) which operates in the state of Washington one or more facilities manufacturing lumber, plywood, veneer, posts, poles, pilings, shakes, or shingles must petition the department to become eligible to purchase timber reserved under chapter 424, Laws of 1989. The values on the petition must be certified by a certified public accountant in Washington state. The petition must be sent or delivered to the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504. The values required are:

(1) Total timber volume, converted to Scribner decimal C (Scribner) log scale, purchased by the enterprise in each of the previous three years.

(2) Scribner timber volume purchased by the enterprise from state and federally owned sources in each of the previous three years.

(3) Total Scribner volume purchased by the enterprise processed as defined by chapter 424, Laws of 1989 in the state of Washington in the previous year.

(4) Names and addresses of manufacturing facilities in Washington owned and/or affiliated with the enterprise.

The department will review the petition and supporting documents and determine if the petitioner is eligible under chapter 424, Laws of 1989 and if so add that enterprise to the eligibility list maintained in the Timber Sales Division, Department of Natural Resources, Olympia, Washington 98504, for sales reserved under chapter 424, Laws of 1989. The petitioner will remain on the list for one year from the date of petition. The enterprise may reestablish themselves on the list by petitioning again under this section.

[Statutory Authority: 1989 c 424 § 2. 89-17-057 (Order 566), § 332-140-400, filed 8/15/89, effective 9/15/89.]

Chapter 332-150 WAC

SURVEY, PLAT AND MAP FILING AND RECORDING FEES

WAC

332-150-010	Authority and scope.
332-150-020	Definitions.
332-150-030	Filing and recording fees.
332-150-050	Biennial review.

DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

332-150-040 Filing and recording fees—Designation of fees. [Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-040, filed 6/30/82.] Repealed by 87-15-048 (Order 509), filed 7/14/87. Statutory Authority: RCW 58.24.070.

WAC 332-150-010 Authority and scope. This chapter is promulgated pursuant to the authority granted in chapter 58.24 RCW.

[Statutory Authority: RCW 58.24.070. 87-15-048 (Order 509), § 332-150-010, filed 7/14/87. Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-010, filed 6/30/82.]

WAC 332-150-020 Definitions. As used in WAC 332-150-010 through 332-150-050 the following definitions shall apply:

(1) "Surveys." All records of surveys required to be filed by law pursuant to chapter 58.09 RCW and all other maps, plats, or plans required by local ordinance to be filed and recorded.

(2) "Subdivision plats." All plats required to be filed by law pursuant to chapter 58.17 RCW.

(3) "Short plats." All short plats required to be filed by law pursuant to chapter 58.17 RCW.

(4) "Condominium surveys, plats or maps." All surveys, plats, or maps required to be filed by law pursuant to chapter 64.32 RCW.

(5) "Instrument." The total document filed and recorded of each of the above regardless of the number of pages. Any correction filed amending a previously filed instrument shall be considered a separate instrument.

[Statutory Authority: RCW 58.24.070. 87-15-048 (Order 509), § 332-150-020, filed 7/14/87. Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-020, filed 6/30/82.]

WAC 332-150-030 Filing and recording fees. Effective August 19, 2002, each county auditor shall collect the fee of forty-six dollars per instrument in addition to any other fees required by law, as a condition precedent to the filing and recording of any surveys, subdivision plats, short plats or condominium surveys, plats or maps.

[Statutory Authority: RCW 58.24.070. 02-15-126 (Order 708), § 332-150-030, filed 7/19/02, effective 8/19/02; 87-15-048 (Order 509), § 332-150-030, filed 7/14/87. Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-030, filed 6/30/82.]

WAC 332-150-050 Biennial review. The fee established by these rules shall be reviewed subsequent to the adoption of each biennial budget for surveys and maps to determine the sufficiency of such fee. If revenue is determined to be inappropriate for the program need the board of natural resources shall adjust the fee accordingly.

[Statutory Authority: RCW 58.24.070. 87-15-048 (Order 509), § 332-150-050, filed 7/14/87. Statutory Authority: Chapter 58.24 RCW and 1982 c 165 § 7. 82-14-042 (Order 378), § 332-150-050, filed 6/30/82.]